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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-617

ELMER GERTZ,

Petitioner,

vs.

ROBERT WELCH, INC.,

Respondent.

APPENDIX

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DOCKET ENTRIES

6-17-69—Filed complaint with Exhibits "A and B" and 1 copy.

6-17-69—Filed Designation.

6-17-69—Filed Affidavit under Rule 39.

6-18-69—Issued summons and 1 copy with 1 copy of complaint.

8-12-69—Filed summons returned executed.

9-11-69—Ordered that the above entitled case is set for a status report on Wednesday, October 8, 1969, at 10 A.M.—Decker, J.

9-12-69—Mailed Notices.

9-15-69—Filed Stipulation.

9-15-69—Filed defendant's motion for leave to file its appearance.

9-15-69—Filed defendant's Motion to Dismiss.

9-15-69—Filed appearance of defendant and that of its attorney.

9-15-69—Filed Affidavit under Rule 39.

9-15-69—Stipulation, leave to file appearance and motion to dismiss instanter. Defendant to file Brief in Support of Motion to Dismiss by September 29, 1969. Plaintiff given 20 days to file response and defendant 5 days for reply.—Decker, J. Mailed Notices 9-16-69.

9-15-69—On Court's own motion, cause taken off Status Call for October 8, 1969.—Decker, J. Mailed Notices 9-16-69.

9-29-69—Filed Brief in Support of Defendant's Motion to Dismiss.

10-20-69—Filed Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss.

10-22-69—Filed Reply Brief in Support of Defendant's Motion to Dismiss with attachment.

11-18-69—Filed Memorandum Opinion.

11-18-69—Memorandum Opinion filed. Order defendant's motion to dismiss is hereby denied.—Decker, J. Mailed Notices 11-19-69.

12-29-69—Filed interrogatories to defendant Robert Welch, Inc.

12-30-69—On the Court's own motion, the above cause is set for a report on status on Wednesday, January 7, 1970, at 10 A.M.—Decker, J.

1-7-70—Defendant time to answer extended to February 15, 1970 and cause set for pre-trial conference on March 9, 1970 at 9:30 A.M.—Decker, J. Mailed Notices 1-8-70.

2-13-70—Filed defendant's Answer to Complaint.

3-9-70—Pre-trial conference held. Order discovery cut off by May 4, 1970 and final pre-trial conference set that date at 9:30 A.M.—Decker, J. Mailed Notices 3-10-70.

4-30-70—Filed Plaintiff's Notice; Motion.

4-30-70—On motion Plaintiff, Protective Order entered limiting scope of examination as to speeches and writing for period of 20 years. Pre-trial conference reset to June 2, 1970 at 9:30 A.M.—Decker, J. Mailed notice 5-1-70.

4-30-70—Filed defendant's answers to interrogatories.

6-2-70—Pre-trial conference held. Cause set for trial on September 14, 1970 at 10 A.M.—Decker, J. Mailed notices 6-3-70.

9-14-70—Filed Motion to postpone trial date extension of time defendant's Discovery.

9-14-70—Filed Motion to file amended answers.

9-14-70—Filed Notice.

9-14-70—Filed defendant's motion for summary judgment.

9-14-70—Filed Plaintiff's motion for summary judgment.

9-14-70—Parties given leave to file motions for Summary Judgment. Cause reset to September 21, 1970 at 10:00 A.M. for trial.—Decker, J. Mailed notices 9-15-70.

9-14-70—Filed Plaintiff's deposition of Elmer Gertz.

9-16-70—Plaintiff's motion to reset trial to September 23, 1970 is denied. —Decker, J. Mailed notices 9-17-70.

9-16-70—Filed Amended answer of defendant.

9-16-70—Filed Memorandum opinion of Judge Decker.

9-16-70—Memorandum opinion filed. Ordered that plaintiff's and defendant's motions for summary judgment are denied; trial date reset to September 21, 1970; discovery to remain open until that date; defendant's motion for leave to file amended answer is granted.—Decker, J.

9-8-70—Pre-trial conference held. Decker, J. Mailed notices 9-21-70.

9-21-70—Filed stipulation.

9-21-70—Filed defendant's trial brief.

9-21-70—Filed plaintiff's trial memorandum.

9-21-70—Filed plaintiff's notice to produce documents.

9-21-70—Filed defendant's motion in limine.

9-21-70—Cause called for trial. Defendant's motion for continuance denied. Motion Sun-Times to quash supoena granted. Following jurors selected and sworn: Carolyn T. Tredwell, Adolph B. Oleckno, Robert Williams, Valeria J. Pawlak, Daniel T. Elston, Frank Schmidt, Kenneth P. Brownlee, Phyllis Scherndahl, Dolores R. Kleffe, Joseph M. Koyden, George S. Iny, Russell Dethlefsen. Parties stipulate, in case one but not more than two jurors excused for good cause, trial may proceed before remaining panel with full force

and effect. Opening statements made. Evidence heard on behalf of plaintiff in part and cause continued to September 22, 1970 at 10 A.M.—Decker, J. Mailed notices 9-22-70.

9-21-70—On motion plaintiff, order paragraph 3 of amended answer as to paragraph 3 of Count 1 and paragraph 3 of count II of complaint hereby stricken.

Paragraph 1 and 2 of the first separate defense of said amended answer are stricken. Motion to strike paragraph 7 of the first separate defense of said amended answer is denied.

Second separate defense of said amended answer is stricken. (DRAFT)—Decker, J. Mailed notices 9-22-70.

9-22-70—Filed stipulation.

9-22-70—Filed plaintiff's additional trial memorandum.

9-22-70—Filed plaintiff's motion in limine.

9-22-70—Filed refused instructions.

9-22-70—Filed given instructions.

9-22-70—Further evidence heard on behalf of plaintiff. Plaintiff rests. Evidence heard on behalf of defendant. Defendant rests. Both sides rest. Final arguments heard. Court instructs the jury. Marshal sworn and jury retires to consider their verdict. Parties stipulate to sealed verdict to be opened following day of Court.—Decker, J. Mailed notices 9-23-70.

9-22-70—Order directing U.S. Marshal to provide dinner for twelve jurors and one deputy Marshal.—Decker, J. Mailed notices 9-24-70.

9-23-70—Filed verdict.

9-23-70—Sealed verdict opened in Court. Jury returns following verdict: "We, the Jury, find the defendant guilty and assess the plaintiff's damages at the sum of $50,000.00."

Judgment entered on the verdict in favor of plaintiff and against defendant for damages in amount of $50,000.00 and costs.—Decker, J. Mailed notices 9-24-70.

9-23-70—Enter judgment on the jury verdict—by the Clerk.

10-1-70—Filed Supersedeas Bond No. 4325423 in the sum of $55,750.00.

10-2-70—Filed Notice of Motion.

10-2-70—Filed Motion.

10-2-70—Filed Motion for judgment notwithstanding the verdict and in the alternative motion for a new trial.

10-2-70—Order approving supersedeas Bond.—Decker, J. Mailed notices 10-5-70.

10-2-70—Plaintiff given leave to file post trial motion and two weeks to file brief in support. Defendant given 10 days to answer and plaintiff 5 days to reply.—Decker, J. Mailed Notices 10-5-70.

10-16-70—Filed Defendant's Brief in support of motion for judgment notwithstanding the verdict and in the alternative motion for new trial.

10-26-70—Filed Plaintiff's memorandum in opposition to defendant's Motion for judgment notwithstanding the verdict and in the alternative motion for new trial.

12-8-70—Filed Memorandum opinion.

12-8-70—Memorandum opinion filed. Judgment notwithstanding verdict should be entered for the defendant. Motion for a new trial is conditionally

denied. Accordingly verdict for plaintiff is set aside and defendant's motion for judgment notwithstanding the verdict is granted.—Decker, J. Mailed notices 12-10-70.

2-14-70—Filed notice of appeal filed by the plaintiff-appellant.

2-14-70—Filed bond on appeal in the amount of $250.00.

2-16-70—Mailed copy of notice of appeal to Mr. James A. Boyle, Jr. and Mr. Wayne B. Giampietro.

1-1-71—Filed defendant-appellant notice of appeal.

1-11-71—Filed Defendant's Notice of Motion.

1-11-71—Filed Defendant's Motion re service by plaintiff of the issues which he intends to present on appeal.

1-11-71—On motion defendant, order plaintiff to deliver to defendant his statement of issues he intends to present on appeal, Defendant's time to cross designate transcripts of record for additional 10 days. Time for transmission of record on appeal extended to February 16, 1971.—Decker, J. Mailed notices 1-12-71.

2-8-71—Filed defendant's exhibits A to H.

1-18-71—Filed stipulation.

1-18-71—Filed designation of transcript of proceedings.

2-16-71—Filed plaintiff's exhibits.

2-16-71—Clerk's file copy of transcript of proceedings had on September 14 and 21, 1970 before Judge Decker, filed by the official court reporter.

2-16-71—Filed motion of plaintiff for motion for extension of time.

2-16-71—Enter order extending time within which record on appeal is to be filed to and including March 2, 1971—Napoli, J. Mailed notices 2-17-71.

[7-16] COMPLAINT

Plaintiff, Elmer Gertz, by his attorney, Wayne B. Giampietro, complaining of defendant, Robert Welch, Inc., a Massachusetts corporation, alleges as follows:

1. Plaintiff is a citizen of the State of Illinois. Defendant Robert Welch, Inc., is a corporation incorporated and existing under the laws of the State of Massachusetts, having its principal place of business in Belmont, Massachusetts. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00).

2. There is complete diversity of citizenship herein and this Court has jurisdiction of this action under 28 U.S.C. §1332(a)(1).

3. Plaintiff was born in Chicago, Illinois, and has lived his entire life in this city, except for a few years in his youth, in Cleveland and a few months, during his college years, in Brooklyn. He was educated in the public schools of Chicago, except for the few years he spent in Cleveland. He attended the University of Chicago for six years, receiving his bachelor's degree (Ph.B.) in 1928 and his law degree (J.D.) in 1930. He is married and has children and grandchildren who reside in the Chicago area. His family, friends, acquaintances, colleagues and clients live, for the most part, in the Chicago area. He belongs to professional, literary, historical, religious, educational, philanthropic and civic organizations in the Chicago area and has held numerous offices, including that of president, in such organizations. He belongs to the American, Illinois State, Federal, Seventh Circuit and Chicago Bar Associations, Appellate Lawyers Association of Illinois, and the Decalogue Society of Lawyers, and has served

on the committees of these groups and has been president of the latter organization. He has received awards and citations for public services from several groups. He has written books, pamphlets, articles and reviews, some of his work appearing in leading newspapers, magazines an encyclopedias. Biographical notices of him appear in several standard reference works, including *Who's Who in America, Who's Who in the Midwest,* and *Contemporary Authors,* all of which are readily available to the public as a whole, including defendant.

4. Plaintiff was admitted to the practice of law by the Supreme Court of Illinois in 1930 and has practiced, and is practicing, his profession since then before all of the courts of this State and in courts of other jurisdictions. He has been admitted to practice before the United States District Court in Chicago and Detroit, the United States Court of Appeals for the Seventh Circuit, and the United States Supreme Court, and various governmental agencies. He has been specially permitted to practice as a lawyer in cases in various parts of the country.

5. At all times plaintiff has deservedly enjoyed a good reputation as a lawyer and citizen, continuously throughout his career, and has always been thought of and has always been a loyal and respected citizen of the United States, and has never been thought of or accused of being disloyal to the United States or to its system of government.

6. Sometime prior to March 22, 1969, defendant caused to be written, printed, published and distributed to the public at large, a certain pamphlet containing an article entitled "Frame-Up, Richard Nuccio and The War on Police," a copy of which is attached hereto as Exhibit

"A" and incorporated by reference as though fully set forth herein.

7. This said article purports to be a "reprint" of an article which "first appeared in the April, 1969, issue of American Opinion", but said "reprints" were distributed to the public in the City of Chicago, Illinois prior to the time at which the April, 1969, issue of American Opinion was available for purchase in the said City of Chicago, Illinois.

8. Copies of the said pamphlet have been shipped to various groups, organizations and individuals within the State of Illinois by defendant and, with the knowledge and approval of defendant, have been distributed to the public at large by said groups and individuals within this State, which is the State where plaintiff lives and carries on his profession. The said article is of and concerning a series of events and alleged events that occurred within the City of Chicago, State of Illinois, where the person who wrote said article for defendant came to obtain the statements placed in said article.

9. Defendants have continued their distribution of this said pamphlet in Illinois up to the present time, the latest said distribution to the public being on June 15, 1969, at Oak Brook, Illinois, at a gathering of the John Birch Society, at which the principal speaker was Robert Welch.

10. In the said article appear the following untrue and defamatory statements, among others, of and concerning plaintiff:

a) p. 5

"The file on Elmer Gertz in Chicago Police Intelligence takes a big, Irish cop to lift. According to the *Communist Worker* of December 8, 1964, he has

signed a petition to abolish the House Committee on Un-American Activities. On May 12, 1966, he sponsored another such petition, published by the Illinois division of the American Civil Liberties Union —founded by Harry F. Ward, one of the top Communists in the United States. Gertz was also a pallbearer for Jack Ruby, the 'lone fanatic' who killed the 'lone fanatic' who killed the President of the United States. He has been an official of the Marxist League for Industrial Democracy, originally known as the Intercollegiate Socialist Society, which has advocated the violent seizure of our government."

b) pp. 5-6

"The Communist parade in April included the usual Communist violence. Apparently, the traitors were practicing for what they planned to do in August. And just as the phony Walker Commission and its *Walker Report* followed the terrorism in August, so a Commission and a report called *Dissent and Disorder* followed the terrorism in April, financed by the Roger Baldwin Foundation of Communist Harry Ward's A.C.L.U. After an 'impartial investigation,' the A.C.L.U.'s Commission ridiculed 'the inaccurate impression that the April 27 event was a left-wing affair'; exonerated the Communist Chicago Peace Council, which ran it; and naturally blamed the violence the Communists caused on the Chicago police: 'On April 27, at the peace parade of the Chicago Peace Council, the police badly mishandled their task. Brutalizing demonstrators without provocation, they failed to live up to that difficult professionalism which we demand.'"

"And the Chief Counsel for the Commission which committed *Dissent and Disorder* was the same Elmer Gertz who now turns up as lawyer for the Nelsons in the attack on Officer Nuccio."

"In fact, the only thing Chicagoans need to know about Gertz is that he is one of the original officers, and has been Vice President of the Communist National Lawyers Guild—which has been described by the House Committee on Un-American Activities as 'one of the foremost legal bulwarks of the Communist Party'—and which probably did more than any other outfit to plan the Communist attack on the Chicago police during the 1968 Democrat Convention."

c) p. 9

Below a photograph of Elmer Gertz there appears the following: "Elmer Gertz of Red Guild harasses Nuccio."

d) p. 10

"Like millions of other Americans, he was watching an organized attempt to discredit our local police —organized primarily by the Communist National Lawyers Guild, preeminent in which is the same Elmer Gertz who now appears as the Nelsons' lawyer."

e) p. 12

"The C.P.C., as you will recall, is the Communist outfit headed by a Communist and defended by Leninist Elmer Gertz, who now turns up as lawyer for the Nelsons."

f) p. 17

"Two Chicago Assistant Corporation Counsels warned Nuccio not to testify at the coroner's inquest, for fear what he said might jeopardize their defense against Communist-fronter Gertz."

11. The said libelous publications are intended by defendant to,and do in fact, depict and represent plaintiff to his clients, his colleagues, the courts, and the public in general in Illinois and elsewhere as a believer in, a follower and advocate of Communism and Leninism, a member of or affiliated with the Communist Party and

organizations controlled by it, a leader of or a participant in Communist conspiracies, and enemy of the government, a believer in force, a revolutionary and an enemy of law and order, all and each of which statements and charges were and are utterly false and untrue and were known by the defendant to be false and untrue at the time of printing said article. Such false and libelous publications are intended to hurt plaintiff in his professional reputation and practice as a lawyer and as a citizen and to prejudice him in his relations with his clients, colleagues, the courts, and the community and public generally. As a lawyer he is particularly sensitive to such false and defamatory charges.

12. In particular, plaintiff has never been connected in any way with the Marxist League for Industrial Democracy, the League for Industrial Democracy, or the Intercollegiate Socialist Society. Plaintiff was not one of the original officers of what defendant styles the "Communist National Lawyers Guild" or the National Lawyers Guild. During the period when plaintiff was a member and officer of the National Lawyers Guild, its membership included lawyers of great reputation, and public officials and jurists of the highest rank, including some who became Justices of the Supreme Court of the United States. Its conventions and other meetings were attended and addressed by Presidents of the United States and others of great stature and reputation. Plaintiff has not been connected in any way with said National Lawyers Guild for over fifteen years. Plaintiff has never been connected in any way with the Chicago Peace Council.

13. The bad faith and malice of defendant is shown by the fact that neither it, nor anyone connected with it, nor the author of the defamatory article, nor anyone in

their behalf, made any inquiries whatsoever of plaintiff, his family or associates as to any of the matters and things set forth in the said article. Defendant made no effort to verify any of the false and defamatory allegations contained in said article, but either relied upon the barest and barest hearsay and misrepresentations or completely fabricated such statements.

14. A principal theme of defendant's said article is that police Officer Richard Nuccio was "framed" on a charge of murder by several persons, apparently including the Judge, the State's Attorney, various witnesses, and plaintiff. Since Nuccio's appeal from the murder conviction is now pending in the Supreme Court of Illinois and since the suits filed in behalf of the victims of Nuccio's acts are pending in this and other courts, plaintiff expressly excludes at this time, without waiving any rights with respect thereto, the allegations of the said article with respect to Nuccio, confining himself herein without waiving any rights with respect thereto, to the other defamatory statements made by defendant against him, which do not involve the consideration of the Nuccio suits. Of course, plaintiff expressly denies that there was, or is, any conspiracy to frame Nuccio for any crime whatsoever and denies that he was, or is, involved in any way in any such alleged conspiracy.

15. The conviction of Richard Nuccio for murder is presently pending on appeal before the Supreme Court of the State of Illinois as are three suits growing out of the acts of Richard Nuccio and June 4, 1968, one presently pending before the United States District Court for the Northern District of Illinois, one presently pending before the Circuit Court of Cook County, Illinois, and one presently pending before the Appellate Court of Illinois.

The publication of the said article by defendant at this time while said suits are pending before various courts of law is an attempt on the part of defendant to interfere with this said litigation and to prejudice the parties thereto, including those persons represented by plaintiff and to interfere with the process of these said courts. These acts are a further indication of the malice of defendant against plaintiff.

16. As a result of the said article, plaintiff has been, and is, or may be, injured in his good name, credit and reputation, both as an individual and as an attorney at law. At the present time plaintiff does not know how much actual damage he has suffered as a result of this said article, and, therefore, seeks only nominal actual damages. However, the actual malice and viciousness of said article, entitles plaintiff to a large amount of punitive damages.

Wherefore, plaintiff demands judgment against defendant in the sum of Ten thousand and one dollars ($10,001.00) actual damages and Five hundred thousand dollars ($500,000.00) punitive damages and his costs of suit herein and such further or different relief as to this Court appears to be just.

Count II

1-5. Plaintiff incorporates as though fully set forth herein, paragraphs 1 through 5 of Count I as paragraphs 1 through 5 of this Count II.

6. Sometime prior to March 24, 1969, defendant caused to be written, printed, published and distributed to the public at large a certain magazine entitled "American Opinion," issue of April, 1969, which said magazine contained an article entitled "Frame-Up, Richard Nuccio And

the War on Police," a copy of which is attached hereto as Exhibit "B" and incorporated by reference as though fully set forth herein.

7. This said magazine has been shipped by defendant to various bookstores, newsstands and other distributors of magazines within the State of Illinois and, with the knowledge and approval and with the assistance of defendant, has been distributed to the public at large by said groups and individuals within this State, which is the State where plaintiff lives and carries out his profession, and the said article is of and concerning a series of incidents which occurred within the City of Chicago, State of Illinois, which is where the person who wrote said article for defendant came to obtain the statements which he placed in said article.

8. Plaintiff incorporates as though fully set forth herein paragraph 10 of Count I as paragraph 8 of this Count II.

9. In addition to said statements in said article, there appear on the inside front cover of the April, 1969, edition of "American Opinion", the following statements:

> ". . . But we do know that when *American Opinion's* Alan Stang goes after the facts in a story he gets them—just as he has, again, in the very important article beginning on page one.
>
> "Mr. Stang reports this month on the framing for murder of an outstanding Chicago police officer—a man with no less than twenty-six formal citations for the excellence of his police work. That this is a part of the Communist war on our police is as certain as the innocence of the officer they have chosen as their symbolic target. So important is this one, in fact, that reprints will be made immediately available."

10-15. Plaintiff incorporates as though fully set forth herein paragraphs 11 through 16 of Count I as paragraphs 10 through 15 of this Count II.

Wherefore, Plaintiff demands judgment against defendant for the sum of Ten Thousand and one dollars ($10,001.00) actual damages and the sum of Five hundred thousand dollars ($500,000.00) punitive damages and his costs of suit herein, and such further or different relief as to this Court appears to be just.

/s/ Wayne B. Giampietro
Attorney for Plaintiff

FRAME-UP

Richard Nuccio And The War On Police

by

Alan Stang

ABOUT THIS ARTICLE

These reprints of FRAME-UP — RICHARD NUCCIO AND THE WAR AGAINST THE POLICE, by Alan Stang, will be sent postpaid to any address in the United States, at the following prices:

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Belmont, Massachusetts 02178

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FRAME-UP

Richard Nuccio And The War On Police

Alan Stang *is a former business editor for Prentice-Hall, Inc., and a television writer, producer, and consultant. Mr. Stang is a frequent contributor to* AMERICAN OPINION *and is author of the Western Islands best-sellers,* It's Very Simple *and* The Actor. *Alan Stang has just returned from an investigative trip to Chicago, where he conducted extensive research into the Richard Nuccio Case.*

■ ON THE night of June 4, 1968, Mr. Benjamin Citron, who owns Franksville, next to Wrigley Field in Chicago, saw Mr. Ronald Nelson a few feet away through the window, sitting at the table just outside the glass. Citron knew Nelson well. He was a regular at the restaurant, and a leader of a gang of toughs who liked to draw obscene pictures on the tables. They had first met about two years before, when Nelson and an accomplice used Franksville's washroom to store a cache of marijuana and pep pills, which Citron reported to police before Nelson could reclaim it.

Some time later, Nelson returned to Franksville under the influence of drugs, greeted Citron as follows: "You lousy Jew"; hit Citron and knocked off his glasses. This is probably the place to mention that the hoodlum named Nelson was at the time a "youngster" of seventeen, and Citron a man in his middle fifties.

In Boys Court, Judge Saul Epton persuaded Mr. Citron to withdraw his charges, in exchange for which he ordered Nelson to stay away from Franksville. But the young hood didn't stay away. When Mr. Citron had seen him there, he had reminded Nelson of the Judge's order. And Mrs. Citron had called his mother, who said she couldn't "do a thing with him." So it went, society excusing Ronald Nelson on the modern theory that crimes are caused not by criminals but by punishment; that you are to blame when your car is stolen. You see Nelson's arrest record – part of it – reproduced on page four.

So Ronald Nelson's mere presence at Franksville on the night of June 4, 1968, was a violation of an order issued by a Judge. And when Citron saw him he was afraid; not just because Nelson was so obviously drunk, but because he was staring at Citron from a few feet away through the window – playing all the while with a *knife.*

As he had so many times, Ben Citron called the police.

At about 9:40, a marked police car arrived with uniformed Officers Ronald Rothmund and Richard Nuccio; and then an unmarked car with Plainclothesmen Kenneth Hyatt and Joseph Sand. Nuccio also knew Nelson well. On June 11, 1967, for instance, a year earlier, Nelson had not only been at Franksville again – in violation of Judge Epton's order – but was one of a group throwing stones at the premises, a favorite pastime. When Officer Nuccio, who happened to be eating there, went to the aid of another Officer who tried to quiet them, Nelson and the others had attacked Nuccio using a board as a club and sent him to the

hospital for X-rays and treatment. Nelson and the others had been arrested of course, but were released at the station by Captain John Lennon, because they had been giving the police information about burglaries – information it is easy to believe they had.

On the night of June 4, 1968, Officer Rothmund was the first man to reach Nelson and saw the hoodlum with the knife. And as he had so many times when the police arrived because of his presence, Nelson ran, this time into an alley behind Franksville. Rothmund shouted to his fellow Officers to stop him, loudly warning that Nelson had a knife. Officer Nuccio, followed closely by Hyatt, pursued the hoodlum into the alley, trailing by twenty or twenty-five feet.

Nelson slowed, cocked his arm and turned slightly to the right.

"Look out!" yelled Hyatt, "he's going to throw the knife!"

Hyatt dove for cover. Nelson threw the knife at Officer Nuccio. The Officer drew his revolver, went to one knee and fired. The knife shot over Nuccio's head, and was retrieved by Officer Hyatt.

Nelson died in a hospital a few minutes later. His body was found to contain 71 mg. percent of ethanol. Indeed, in the coroner's report on the death of this nineteen-year-old, we read that the "significant conditions contributing to death" were not only Nuccio's bullet, but a case of "acute alcoholism."

You will see reproduced, on page seven, one of twenty-six Honorable Mentions won by Officer Nuccio for his fearless police work since his appointment to the force in December, 1966 – an average of better than one per month.

This time, Nuccio received no Honorable Mention. No, instead he has been convicted of murder and sentenced to at least fourteen years in prison.

I

It seems that the friends of the young alcoholic and hoodlum followed him to the hospital, where they made a disturbance which required the police. On the next day, Mr. Citron of Franksville was threatened by telephone and had to be given police protection. That night, some "youngsters" were arrested at his restaurant with a sign which threatened: "Die, Nuccio, die, Nuccio. If the courts don't get you, we will." They picketed Officer Nuccio's house, yelling "Killer." And such friends of Nelson's as Noel Kitchen, John Ahrens, George Bish, and Trena Ciabay began holding private meetings, at the home of Judy Rankin, for instance, on Belle Plaine, where they got some expert public relations and legal assistance, resulting, for example, in a leaflet headed: "We don't like the Nelson killing."

On July eleventh, this young gang appeared in force at a regular board meeting of the Lake View Citizens' Council, a local organization whose members have varying political views. And with the assistance of Gene De Roin, Chairman of L.V.C.C.'s Human Relations Committee, and its second Vice President, Reverend Carl Lezak of St. Sebastian's School where the meeting was held, they engineered an L.V.C.C. endorsement of a resolution calling for Officer Nuccio's suspension – and another calling for an L.V.C.C. public hearing about the police in general and Nuccio in particular.

Nelson's friend Bish is intensely interested in the police. A few days later, he was arrested as one of a gang which sent another Police Officer, M. A. Rosenthal, to the hospital with serious injuries.

On July twenty-second, the public hearing was held at the Lake View Presbyterian Church – two days before the inquest. Voices in the audience called for Nuccio's arrest, for disarming the police, and for a civilian review board – one-third of whose members would represent "youth," and which would have the power to suspend and fire policemen. John P. Fahey, Commander of the Town Hall Nineteenth Police District, and

Officer Richard Nuccio, shown here with one of his three children, was framed for murder.

Officer Nuccio's boss, told the crowd: "Right or wrong, you obey a policeman" – which Gene De Roin later told me was "irrational," and the wrong way to communicate with the "youth." Many in the crowd jeered the Commander. Some stood and yelled "Sieg heil!"

Revolutionary agitators were now hard at work to "Get Richard Nuccio."

As one of the teenagers' attorneys put it, according to the *Chicago Seed:* "No one is bound by the findings of a Coroner's Inquest. However, it is up to the community to exert whatever power it can on the existing investigating bodies, preferably before the 24th."

The *Seed* is an "underground," Marxist, revolutionary newspaper which pushes drugs and of course degeneracy. It naturally opposes our local police and came out strongly against Officer Nuccio. So did the September, 1968, issue of the *Movement,* which calls policemen "pigs" and says it is affiliated with the Communist Student Nonviolent Coordinating Committee and the terrorist Students for a Democratic Society:

About twenty people were at the hot dog stand the night Richard Nuccio, cop, shot Ron Nelson, 19, in the back, coldly, deliberately, from about 60 feet, on June 4, in Chicago. Ron was running down an alley, running because he had been harassed by Nuccio before and was afraid of what could happen that night. The owner of the stand had called the police because he hates the kids and wanted to get them off his place. No fight, no looting, no disturbance, nothing had provoked the shooting.

Yes, the Comrades now had the line: Get Richard Nuccio!

Then there was the Lake View Youth Council, which speaks in a flyer of a "police-youth communication breakdown," and of the feeling of "the youth" that the Nineteenth District police have "declared war on them and that's exactly what it is, a war caused by lack of compassion, sensitivity and understanding. A committee of the Youth Coun-

cil is probing deeper into the matter."

We read that the purpose of the Youth Council is to organize the youth. It will offer its members legal aid. And the flyer paraphrased the Communist Black Panthers: "The major theory behind the youth council is 'youth power.' . . ."

Also circulating in the neighborhood at the time was a *Community Newsletter*, written and published by "concerned adults," who speak of an "undeclared war between the police and the teen-agers," and call for a civilian police review board – which is a standard Communist ploy.

Part of the arrest record of hoodlum Nelson.

"A child has been killed!" writes Les Paul in this incendiary sheet. "The killer, a cop, roamed the street, still in good standing, until the city acted to over-rule the commander of *our* district. *Our* district police see no need to be responsible to the people! *Our* district people see youth as their enemy! *Our* district police feel free to harass, to threaten, to brutalize anyone they don't like, and *our* district police find most of us they don't like especially kids."

Indeed, says Mr. Paul: "A community that attacks its own children is sick; those who carry out these attacks are no better than mad dogs . . . ."

Get it: The police are "mad dogs."

And there is a college student named Carol Whiting, who wrote as follows of the matter some time later in a revolutionary "Wallpaper": "The youth in Lakeview have taken a step in the right direction. It's only a beginning, though. The time has come when youth all across the country – in school and out – must start demanding – not asking for – what's rightfully theirs. We can no longer sit back and ask for favors. We must demand equal rights and be willing to fight for them whether it be in the courts or in the streets."

Elsewhere in the same "Wallpaper," we read: "LeRoi Jones tells the Man: Up Against the Wall, Mother f****r: This is a Stick-up!

"Who are we sticking up? That's important to know. Sure we have to fight the pigs when they attack and when they protect the city for the people. But the pigs only carry out orders (though often as brutally as possible). * * * The cops don't run the show; they're not the main enemy. We must move the fight on from anti-pig to anti-imperialist pig."

The article urges readers to call the terrorist Students for a Democratic Society.

In short, the Nelson incident was used by revolutionaries of the Far Left to try to turn the people against the police – and vice versa – at a time when criminals with official sanction are tearing our country apart.

II

BY now you are thinking that there is more to this matter than some teenagers hanging around a hot dog stand. Teenagers at a hot dog stand would not know how to arrange the carefully orchestrated publicity the case soon acquired. And of course you are correct. They wouldn't.

But Elmer Gertz for instance would.

On behalf of the Nelson family, attorney Gertz has filed three suits against Officer Nuccio and the City of Chicago, two in state court and one under the Federal Civil Rights Act, asking for a total of almost a million dollars.

The file on Elmer Gertz in Chicago Police Intelligence takes a big, Irish cop to lift. According to the Communist *Worker* of December 8, 1964, he has signed a petition to abolish the House Committee on Un-American Activities. On May 12, 1966, he sponsored another such petition, published by the Illinois division of the American Civil Liberties Union – founded by Harry F. Ward, one of the top Communists in the United States. Gertz also was a pallbearer for Jack Ruby, the "lone fanatic" who killed the "lone fanatic" who killed the President of the United States. He has been an official of the Marxist League for Industrial Democracy, originally known as the Intercollegiate Socialist Society, which has advocated the violent seizure of our government.

On April 27, 1968, the Chicago Peace Council conducted a "peace parade," as part of an operation coordinated around the country by the National Mobilization Committee to End the War in Vietnam, a Communist outfit headed by Communist David Dellinger – which also coordinated the terrorist attack on the police at the Democrat Convention in August. The Chicago Peace Council is also a Communist outfit. It is headed by a Communist named Jack Spiegel. Its headquarters are at 1608 W. Madison in a building owned by Communist John Rossen, an official of the defunct Communist Fair Play for Cuba Committee. Also headquartered in the building is the Communist S.D.S. Indeed, the Chicago Peace Council chose a former National Secretary of S.D.S. named C. Clark Kissinger to organize its Communist parade last April twenty-seventh. Kissinger, too, was later active in the terrorism against the police at the Chicago Convention.

The Communist parade in April included the usual Communist violence. Apparently, the traitors were practicing for what they planned to do in August. And just as the phony Walker Commission and its *Walker Report* followed the terrorism in August, so a Commission and a report called *Dissent And Disorder* followed the terrorism in April, financed by the Roger Baldwin Foundation of Communist Harry Ward's A.C.L.U. After an "impartial investigation," the A.C.L.U.'s Commission ridiculed "the inaccurate impression that the April 27 event was a left-wing affair";

Ronald Nelson, shot as he attacked with knife.

exonerated the Communist Chicago Peace Council, which ran it; and naturally blamed the violence the Communists caused on the Chicago police: "On April 27, at the peace parade of the Chicago Peace Council, the police badly mishandled their task. Brutalizing demonstrators without provocation, they failed to live up to that difficult professionalism which we demand."

And the Chief Counsel for the Commission which committed *Dissent And Disorder* was the same Elmer Gertz who

now turns up as lawyer for the Nelsons in the attack on Officer Nuccio.

In fact, the only thing Chicagoans need to know about Gertz is that he is one of the original officers, and has been Vice President, of the Communist National Lawyers Guild – which has been described by the House Committee on Un-American Activities as "one of the foremost legal bulwarks of the Communist Party" and which probably did more than any other outfit to plan the Communist attack on the Chicago police during the 1968 Democrat Convention.

Yes, Gertz is good at publicizing "police brutality." On July twenty-fourth, two days after the "open hearing" at the Lake View Presbyterian Church, he was active at the inquest, which had the flavor of a trial.

Five days later, Richard Nuccio was indicted for murder.

III

AT the trial, suddenly, none of the State's witnesses remembered seeing Nelson with a knife. Nobody heard Officer Rothmund warn Officer Nuccio he had one. Nobody heard Plainclothesman Hyatt warn Officer Nuccio the hoodlum was going to throw it. Instead they had decided to say they saw Nuccio fire, while standing erect – and do so when Nelson was already eighty or ninety feet away. They claimed that Officer Nuccio had kicked Nelson as he lay on the ground; that on earlier occasions he had tried to provoke the kindly Nelson by saying he had made love to his girl; had forcibly driven the gentle Nelson long distances in police cars and made him walk home; had called the pure and virtuous girls at Franksville whores; had threatened various teenagers with gun and blackjack.

One of the prosecution's witnesses had never made a statement until July seventeenth – *six weeks after the shooting.* Another was Trena Ciabay, who as you will recall had met with the others at the home of Judy Rankin, where some of the planning had been made. Another "witness" was Linda Scheel, who was one of those arrested on the night after the shooting, with the sign which threatened Officer Nuccio with death. There was John Ahrens,* who also had met with the others at the Rankins', had been convicted of possession of marijuana in 1966 – and who, on June 11, 1967, was one of those arrested for attacking Nuccio with a board, sending him to the hospital. There was Noel Kitchen, who also had participated in the planning, had threatened Nuccio in July, 1967, and once was arrested along with Ahrens, who was arrested for possession of marijuana. On the night of June 4, 1968, Kitchen heard nobody yell anything about a knife. On the contrary: "I thought I heard someone yell 'Shoot him.' "

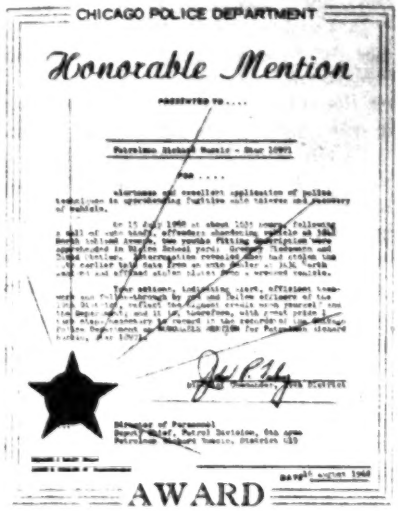
And there is Steve Austill, the State's *star* witness, who was with Nelson at Franksville that fatal night. It was Austill who told the Court for instance that Officer Nuccio had kicked the wounded Nelson. He also admitted having committed shoplifting and car theft. On February 23, 1967, he was given a year's probation for possession of marijuana. On October 26, 1967, he drew another year's probation for petty theft. Indeed, on September 5, 1968 – exactly one week after Officer Nuccio's trial – "star witness" Austill was arrested again on a dangerous drug charge. In fact, on December 16, 1968, he was arrested yet again, this time for burglary, and released on $3,000 bail. Also arrested on that occasion was community pillar George Bish, who had fought so hard for justice for his late friend, Ronald Nelson.

You will remember that Mr. Citron first met Nelson when he and a friend left some marijuana and pep pills in Citron's

*Other teenagers have told police officers in the neighborhood that William Clements, of the *Chicago Daily News*, paid Ahrens forty dollars a day to find other prosecution witnesses. I called Mr. Clements and he said it was "absolutely untrue."

washroom. Austill was the friend. He was also one of those arrested on June 11, 1967, for throwing stones at Franksville and sending Officer Nuccio to the hospital. Austill is a specialist at throwing stones. He had thrown them many times at Mr. Citron and his restaurant. He was throwing them again on June 4, 1968. That was why he had been arrested several times for disorderly conduct and, like Nelson, told by Judge Epton to stay away.

So on the night of the shooting, not only was Austill's presence at Franksville,


CHICAGO POLICE DEPARTMENT

Honorable Mention

AWARD

But one of Patrolman Nuccio's 26 citations.

like Nelson's, a violation of a Judge's order – resulting in his arrest for criminal trespass – but he was already on probation for a previous offense.

In fact, on that night this "witness" was already a fugitive, wanted by the police for jumping bond in another case, and a warrant was outstanding for his arrest.

I realize all this is hard to believe. I'm sorry about that. I'm trying to tell it as baldly as possible to avoid making it even harder.

So now, members of the jury, you have an idea of the credibility of the witnesses. But that of course proves nothing about the incident itself. Hopheads, after all, have moments of lucidity. Maybe the witnesses are telling the truth. So let's hold in abeyance what we have just discussed. Let's forget that these are "oppressed teenagers." Let's treat them like the responsible individuals they say they are, and look strictly at their testimony.

There is for instance a gentleman named Stephen P. Austill, the State's star witness. In July, 1967, Nelson was arrested, and Austill says he went to the police station to get him help, offering in exchange to give information on narcotics to Officer Kenneth South:

Q. Did you have such information available to give Officer South at the time you made the offer?

A. No, sir.

Q. Was that, then, a false promise to him?

A. Yes, sir.

Q. You lied to a police officer to help your buddy?

A. Yes, sir.

Q. So are you lying now on the witness stand for your own purposes?

A. No, sir.

He says he lied to the law before, but is telling the truth now. Does that produce in your mind more than a reasonable doubt? Doesn't it establish the State's *star* witness as an admitted liar?

Then there is Mr. Jose Rodriguez, who said he is a student at Wright Junior College, but under cross-examination said he hadn't started yet:

Q. Was Nuccio in an unmarked car?

A. Yes.

Q. Was Nuccio in uniform?

A. Yes.

Q. He was in uniform in an unmarked car?

A. Yes.

* * *

Q. What was the color of Nuccio's unmarked car, again, please?

A. Brown.

Officer Nuccio of course was in a *marked* car that night. But, as your attorney will tell you, there will often be discrepancies in testimony about tangential details even when witnesses are telling the truth, simply because no two people remember everything alike. So let's simply confine ourselves to the issues on which the State based its case.

Here, for instance, is how Mr. Rodriguez handles the crucial question of how far Nuccio was from Nelson:

Q. Did you ever say to anybody at any time that when Nuccio fired the shot he was 50 feet away from Nelson, did you ever say that?

A. Yes, sir.

Q. And that is different from your testimony now, that he was 80 feet. Is that correct?

A. Yes, sir.

Rodriguez does not explain the additional feet. He simply agrees that, yes, they are additional.

Then there is Edward Ryan, who in a deposition said he was five or ten feet from Nuccio when he fired; at the trial said he was fifty or sixty feet away; then that he was twenty feet away:

Q. Tell us again how far you were away from Nuccio when Nuccio fired the shot in terms of feet?

A. About a rough 20 feet behind him.

Q. You were now 20 feet behind him?

A. That's right.

Ryan also says that Nelson was ninety feet from Nuccio when shot. Remember that the distance between them is crucial to the question of whether Nuccio was in any danger:

Q. And when Mr. Tully [a prosecutor] was asking you questions on July 18, 1968, did you tell Mr. Tully that Nelson was about 40 feet and not 70 or 80 from Nuccio when Nuccio fired the shot, did you tell him that?

A. Yes.

He explains that he returned to Franksville two weeks before the trial and found the distance was seventy or eighty feet. He doesn't say whether he had any help in making this convenient determination.

Closely related to the distance between them is the question of whether Nuccio followed Nelson into the alley. Nuccio and Hyatt say he did, at a distance of twenty or twenty-five feet. But the State's witnesses say he didn't and was far behind. For instance, there is a female named Mary Falagario, who says Nuccio was ten feet north of a light pole at the entrance to the alley when he fired:

Q. Do you know how wide the east-west alley is?

A. No.

Q. You know the alley is about eight feet wide?

A. No.

Q. And that if Nuccio was ten feet to the north of the alley pole, he would be north of the alley and couldn't shoot into the east-west alley? Do you know that?

Then there is a female named Jessica Genaro, who says also that Nuccio was north of the pole when he fired.

Q. How far north of the pole?

A. Well, he was about 10 or 15 feet from the pole.

Q. Well, was he 10 or 15 feet north of the pole?
A. Northeast of the pole.
Q. Northeast of the pole?
A. Yes.

Remember that these are the State's own witnesses. And according to Miss Genaro it was even less possible for Nuccio to fire into the alley. She, too, says she attended one of those meetings about the matter.

And there is Miss Edna Rosario:

Q. And he was a little to the north? Or was he to the south of the light pole?
A. No. He was north.
Q. He was north?
A. Yes.
Q. How many feet north of the light pole was he?
A. Around 20.
Q. About 20 feet.
A. Yes.

So according to Miss Rosario, it was *doubly* impossible for Nuccio to fire into the alley. Something is mighty strange here, isn't it?

Then there is the question of whether Nelson had a knife. None of the State's witnesses saw anything, of course, but on June 24, 1968, Mary Falagario signed a statement for the police in which she said, "I can't be sure" Nelson didn't have a knife. At the trial, however, she says she saw nothing in his hands.

Curious.

And there is the question of how Officer Nuccio actually fired. The Officer says he fired from one knee as part of a reflective action to avoid the knife. The State says he took careful aim and fired erect. But State's witness Leonard Noe testifies as follows:

Q. Did you ever say that when you saw Nuccio fire the gun that he went down almost to one knee? Did you ever say that?
A. Yes, I imagine I did.
Q. Well, you know you did, don't you?
A. Yes, I did.

Police officer after police officer, after Ben Citron, said Noe was right; that Nelson had a knife and threw it; that Nuccio had been warned about it; that he fired from only twenty or twenty-five feet. The knife was duly presented in evidence. And as we have seen, defense

Elmer Gertz of Red Guild harasses Nuccio.

attorney Julius Lucius Echeles destroyed the State's case with a thoroughness reminiscent of the Dresden firebombing. But he made one mistake. He waived a jury trial in favor of a bench hearing before Judge Richard J. Fitzgerald. And, incredible as it sounds, Judge Fitzgerald bought the State's case.

He bought it all.

He agreed, for instance, that Nelson was seventy to ninety feet away when Nuccio fired. "And it would be illogical, therefore, to assume that the deceased

could have in any manner caused the officer great bodily harm . . . ."

Let us assume for the moment that Nelson was as far away as anyone has claimed: ninety feet. Are we also to assume that one is in no danger from a knife thrown that far? Would those who say yes be willing to test their answer? Remember that the target of such a knife has no time to pull out a tape measure to satisfy a judge. And observe that Judge Fitzgerald doesn't say he disbelieves that Nelson had a knife – just that at a distance of seventy to ninety feet Nelson couldn't have done enough damage.

On Thursday, August 29, 1968, Judge Fitzgerald found Police Officer Nuccio guilty of murder – only a few hours after hordes of Communists and young toughs and dupes attacked his fellow officers the evening before, a short walk away at the Conrad Hilton. If, like millions of other Americans, Judge Fitzgerald was watching television on the evening of Wednesday, August twenty-eighth, he saw not those Communist attacks, but just the Chicago police responding to the attacks, which created the impression of an unprovoked "police riot," as the *Walker Report* put it. He heard such humanitarians as Walter Cronkite expressing indignation. Like millions of other Americans, he was watching an organized attempt to discredit our local police – organized primarily by the Communist National Lawyers Guild, preeminent in which is the same Elmer Gertz who now appears as the Nelsons' lawyer.

"There is something within the human soul which cries out against sacrificing a 19-year-old on the altar of deterrence," he said in his verdict, a few hours later in court.

He called his decision "the most difficult I have ever had to make." Some weeks later, he sentenced Richard Nuccio to fourteen to fifteen years in prison the minimum sentence. He has permitted Nuccio a convicted murderer to live at home while his appeal is being filed.

Could it be that Judge Fitzgerald's conscience is bothering him?

IV

PARTICULARLY amazing in the matter is the behavior of the Office of the State's Attorney, in particular that of Assistant State's Attorneys Thomas M. Tully and Matthew P. Walsh, who collaborated to prosecute Officer Richard Nuccio. You will remember that on the night of June 4, 1968, *star witness* Stephen Austill was arrested for criminal trespass. The State's Attorney's Office has since tried to avoid prosecuting him, because he was so helpful in the Nuccio case. You will also recall that, soon after the shooting, community pillar George Bish and some others were arrested for sending another police officer to the hospital. The State's Attorney's office apparently wanted to "nolly" that one, too. Indeed, several police officers tell me this is standard operating procedure, and ask with puzzled bitterness whether it pays to make any more arrests.

On the fatal night of June fourth, as you will also remember, Officer Ronald Rothmund saw Nelson, armed with a knife, escaping the scene. You would think, wouldn't you, that Rothmund had vital testimony to give in the case. But Tully and Walsh, trying for an indictment, did not summon him to the Grand Jury to give it:

Q. Were you called by the State's Attorney to testify before the Grand Jury in this case?

A. No, sir, I was not.

Q. Did Mr. Tully, the Assistant State's Attorney here, know your name?

A. Yes, sir, I believe he did. It was on all the records from the inquest and prior to that.

And you will remember that Officer Kenneth Hyatt also saw the knife. It was Hyatt who warned Nuccio that Nelson

was going to throw it. You would think, wouldn't you, that Hyatt also had vital testimony to give. But Tully and Walsh didn't call him either:

Q. On the day that you spoke with Mr. Tully at the scene of the Franksville area, did you tell Tully that you saw a knife on Nelson and saw Nelson throw a knife? Did you tell him that?

A. Yes, sir, I did.

* * *

Q. Were you subpoenaed by anybody to appear before the Grand Jury that returned an indictment in this case?

A. No, sir.

Your attorney will also tell you that the function of a prosecutor in the United States – isn't simply to prosecute. It isn't just to lock people up. For that we wouldn't need an American prosecutor. We would need a Gestapo or a K.G.B. and a theatrical director, who could stage one of those Nazi or Communist show trials. In our country, on the contrary, a prosecutor is supposed to develop *evidence* – even if the evidence frees an accused – because his purpose isn't basically to prosecute, but to *protect the innocent.*

But Tully and Walsh apparently did some staging of their own. They denied the Grand Jury the testimony which would have thrown the case out of court.

Since the charge was murder, which after all requires some premeditation, Walsh told Judge Fitzgerald at the trial that Nuccio "used the gun that he was given as a police officer to carry out a crime that he possibly had planned, he certainly instituted and completed, on the 4th of June, 1968."

But, first, Officer Nuccio of course didn't know he was going to Franksville that night, until he heard the call on his radio a few minutes before his arrival. He didn't know who would be there. He didn't know what he would find. He didn't even see Nelson until he came running around the building a few seconds before the shooting – which is how much time Nuccio had to "premeditate." And, second, if you really are premeditating to murder someone, would you really premeditate to do it before a swarm of your victim's friends? Does that make sense?

And finally there is the fact that on the evening of the morning Mr. Citron testified, Walsh appeared at Franksville, denounced his testimony, and tried to intimidate him – which if not unlawful itself is at least highly unethical – to such an extent that Citron ordered him off the property.

"Do you realize the penalty for perjury in this state?" said Walsh.

And that sounds to me like some sort of "brutality." Wouldn't you agree?

Indeed, only a short time later, Walsh's partner, Assistant State's Attorney Tully, was accused of intimidating another witness, in another case – "I told him that if he told a falsehood in court, under oath, he could be liable for perjury and could be convicted" – but has been exonerated by the Judge for lack of evidence.

The Judge was the same Richard J. Fitzgerald who convicted Nuccio.

By this time, of course, you are asking yourselves why Tully and Walsh would behave so incredibly. You are wondering whether there could be any other reason than a desire to make grisly reputations.

We don't yet know the whole story – we shall – but apparently there could be such a reason.

V

WHEN I went to Chicago to investigate this case for AMERICAN OPINION, I naturally did not know what I would find. Some people were saying Nuccio had been railroaded. But he had been given his trial and convicted. And policemen are human, like everyone else. Like

judges and prosecutors, they sometimes go wrong. So I thought that maybe I would find nothing amiss. Maybe the complainers were simply complainers. Maybe Nuccio deserved what he got. You will remember that the first public meeting which led to Nuccio's conviction was held at the Reverend Carl Lezak's St. Sebastian's School, and that Lezak took an active part. I had heard that Lezak believed Nuccio was guilty, so I called on him to see whether he could persuade me to agree.

The Reverend gave me a very cordial hour. Like the excerpts of revolutionary literature you have read in this article, he explained that the Nuccio case is symptomatic of the growing "polarization" of our society – in other words, that the teenagers and the police, for instance, are at opposite poles. Indeed, Commander Fahey of the Nineteenth Police District will be interested to learn that Father Lezak says he has kids in his school who are thinking of blowing up the police station, and that one of them says he will become a human torch to do it.

Father Lezak said he "feels sorry" for Nuccio – because he is a murderer – but that most people in Lake View take Nuccio's side, which Father Lezak deplores. He also said the country in general supports the Chicago police, which he also deplores. People don't know the facts. For instance, he said, a hippy or even somebody with a long haircut, gets rough police treatment in the neighborhood. And he said he had been at Lincoln Park during the Convention riots to "counsel the youth," and saw horrible "police brutality," which he said the *Walker Report* proves.

I said I was glad to hear he had actually read the *Report*, because I had read it too, so we both knew it contained statement after statement by the revolutionary leaders that they were specifically coming to Chicago to attack the police.

He answered that he had always been for equal rights for all people. He criticized his congregation, many members of which he said pay their buck or so on Sundays but don't like his sermons on bad housing and civil rights. Maybe they didn't tell him at the seminary that people don't go to church to hear about bad housing.

He said he and a Reverend Bruce Young had recently gone to a meeting in Gary, "and got the word: it's coming."

"What's coming?"

"A Rightwing, Fascist takeover."

That's what he said.

He deplored the fact that the country is moving to the Right. He said he himself is a marked man – marked by the police. For instance, he was physically afraid to go to the Nuccio trial – afraid of the police. Indeed, he said, he is on the subversive list of the Chicago police. I asked him why in the world that would be so. He answered that he didn't know, but that he had always been for equal rights for all people. He came out strongly against "simplistic solutions."

"Are you a Communist?" I asked.

"Certainly not!" he said. "Communists are atheists and I'm a Roman Catholic priest."

He was wearing a yellow sport shirt, but I believed him. Since he said he isn't a Communist, I naturally believed that, too.

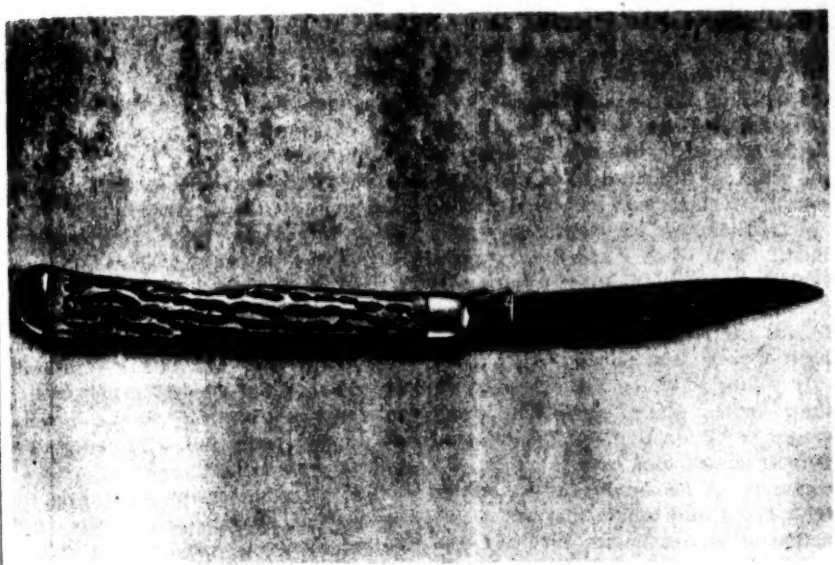
"Are you associated with the Chicago Peace Council?" I asked suddenly.

His eyes narrowed warily, which doesn't prove anything, of course. But, you see, I already knew that one of the reasons he could be on the subversive list is the fact that he has contributed money to the Chicago Peace Council. The C.P.C., as you will recall, is the Communist outfit headed by a Communist and defended by Leninist Elmer Gertz, who now turns up as lawyer for the Nelsons.

"I think I'm on the mailing list," he said.

Interesting, isn't it? Gives you a tingly feeling all over.

I told Father Lezak that, frankly,



Shown here is the knife which hoodlum Ronald Nelson used in attack on Officer Nuccio.

another Roman Catholic priest had told me that children coming home from St. Sebastian's School report that Lezak teaches as follows: "I see nothing wrong with Communism." Indeed: "I sympathize with Communism."

"Another priest told you that?"

"Yes."

"It isn't true."

But, you see, the other priest also told me that one of the victimized parents recently stopped in his office with the announcement that he was on his way to St. Sebastian's to kick Hell out of Lezak, and it was only after much soothing that the other priest was able to change the man's mind and let him out of his office. Had he failed, Lezak would have known how to take it. In February, 1968, he claims to have been beaten in a "civil rights" march at Mt. Greenwood School.

And finally Father Lezak told me – get ready – that as chance would have it, *one of his old friends and schoolmates is a prosecutor in the Nuccio case.*

Why would he tell me this? I don't know. Maybe so that when I found it out, myself, I would be less dumbfounded than you are now. He told me carefully that his friend had snubbed him in the courthouse corridor during the trial, which he said was another example of "polarization" – and which certainly puts both of them in the clear, doesn't it? When he saw I hadn't known about the relationship, he refused to say another thing about it, and would not say which of the prosecutors it is: Tully or Walsh. At this writing, we still don't know, but, as I say, we shall.

Handy, don't you think? Brings all sorts of questions to the mind. Wouldn't you, too, like to have a prosecutor stashed away – just in case you were burning like Hell to have somebody prosecuted?

The second public meeting, which caused Nuccio's conviction, the one at which Commander Fahey was treated like a Nazi, was held as you will recall at the Lake View Presbyterian Church. So I went to see that church's Reverend Thurston Barnett. In the room when I arrived was the Reverend Bruce Young, a

neatly bearded gentleman who like the Sphinx spoke not at all, but studied me through slitted eyes just like in the movies. This was the same man who went with Father Lezak to Gary, where the Father assured me they were warned of the coming "Rightwing, Fascist take-over." He questioned me closely about my credentials – yes, he did say something – and when I expressed surprise, explained along with Barnett that police spies have been nosing among their friends for information, and are in the habit of giving false names.

Then the Reverend Young studied me some more, deftly cataloguing every gesture and intonation, and the Reverend Barnett himself took over. He spoke with contempt of his mother-in-law, one of these types who believe that the assassination of Martin Luther King was conceivably part of a Chinese Communist plot to worsen racial conflict in our country. This made me feel at home. My mother-in-law, also a Presbyterian, also believes that, but I concealed the fact to prevent him from deriding her as well.

He asked me what I thought of the theory. I said I didn't know the facts but it was certainly possible.

When the Reverend Barnett hears something he doesn't like, he snickers. He did so now. Like Father Lezak, he complained about his congregation, many of whom are thinking unpleasantly like our mothers-in-law. He explained that he is for liberty, but a parent has no right to educate his child any way he likes. I asked why it would be better for somebody other than the parent to decide. I said that he and I obviously disagreed, and asked whether it would be all right with him if *I* decided what *his* children should learn.

He snickered and explained that he was for equal rights for all people, and that it was important to avoid "simplistic solutions."

He defended the Reverend John Fry, another Presbyterian minister, who in June of 1968 was accused in a Senate investigation of permitting the Blackstone Rangers, a Chicago gang, to store sniper rifles, sawed-off carbines, hand-grenades, and other weapons – bought with "war on poverty" money – in his First Presbyterian Church. We are told that Fry also permitted the gang to smoke marijuana in the church; advised the members in an extortion racket yielding thousands a week; warned them to watch out for a police raid; and, once passed along a murder assignment. On June 24, 1968, Fry himself told the Senate Permanent Investigating Subcommittee that he had used money from the Chicago Presbytery to provide bond and legal counsel for indicted gang members.

But everything we have read in the newspapers about Fry is false, said Barnett. Indeed, he said, it was Fry who solved the problem of the weapons. The trouble we have been reading about was caused by the corrupt Chicago police. Fry's "solution" was to arrange a treaty between the police, federal authorities, and the gang – under which Fry locked the weapons in a vault in the church – and the corrupt Chicago police raided the church in violation of the treaty, said Barnett.

He didn't say why a gang which specializes in extortion and murder should be given the same status as the Chicago police, and dealt with by treaty like a foreign nation; and he didn't say why storing hand-grenades in a church vault is a *solution.* The good Reverend wouldn't admit actually knowing Reverend Fry, "but you hear things around the Presbytery."

Like Father Lezak, the Reverend Barnett saw the violence at the Democrat Convention and: "It took all I had, physically, to keep from throwing rocks at the police, myself."

I know you're sorry he said it. So am I. But those were the Reverend Barnett's exact words. And like Father Lezak, he recommended the *Walker Report.*

I said I was glad to hear he had actually read the *Report*, because I had read it too, so we both knew it contained statement after statement by the revolutionary leaders that they were specifically coming to Chicago to attack the police.

He snickered and said he was for equal rights for all people. He warned about those dangerous "simplistic solutions."

The Reverend Bruce Young had by now been gone long enough to do some research, and the telephone rang. When he hung up, the Reverend Barnett asked whether I didn't think the greatest danger to the country wasn't Communism, but such groups as The John Birch Society. He described in detail the seizure of Germany by Hitler and his Nazis; like Father Lezak, he was against them. And he talked at length against "the system" – ours. He said the problem isn't just that rotten individuals in it get authority, but that the system itself makes them rotten; which is why, he explained, the same corrupt situation will prevail when Commander Fahey of the Nineteenth Police Division is replaced. He said we should "reorganize" the police department – indeed, the country. I asked repeatedly what he meant; except for the Communist solution of a civilian review board, which the Human Relations Committee of L.V.C.C. endorses, he would not exactly say.

But a "simplistic" answer was flickering in my mind.

Indeed, after a while, we got into the Nuccio case. And I told the Reverend Barnett that what bothered me was for instance the fact that Nuccio has a record of twenty-six Honorable Mentions, while Nelson had a record of several arrests, and according to the autopsy was an acute alcoholic.

That only proves the corruption of the system, said Barnett. It gave twenty-six Honorable Mentions to a murderer. I asked the good Reverend whether he meant that a man is guilty of a crime even before he commits it, and Barnett came out strongly for equal rights for all people. As for the autopsy, he said he believes the pathologist is lying. I asked him why and he explained that "Chicago is corrupt."

Unsuccessfully suppressing a smile, I reminded him that I was a professional journalist; said that I was covering a story, whatever the story was; that if the autopsy is a lie, I would definitely say so; that as a New Yorker, I was delighted to believe Chicago is corrupt – that, in fact, I do believe it; but that we would both look very stupid if I wrote that the pathologist is a liar because Barnett dislikes Chicago. I asked whether there is any *evidence* to support his charge.

He said there isn't – but that he believes it anyway.

I'm sorry all this is so remarkably amusing. But it is an exact narration of our conversation.

I asked the Reverend Barnett whether he saw any contradiction between his ridicule of the idea that the Communists killed King, which the evidence about the Communists makes believable; and his acceptance of the idea that the pathologist is conspiring, for which no evidence exists – and he sternly warned against "simplistic solutions."

What would you guess his reaction would be if I wrote here now that Barnett is a Communist, and that I have no evidence – except for his hatred of the police and our system, for instance – but we know for a fact that some other ministers are?

And finally there was the question of the knife. And I pointed out that it wasn't just something Officer Nuccio says was discovered, but that his testimony is corroborated by three other police officers and a businessman – who were on the scene and saw it.

Barnett snickered and said Mr. Citron is lying. He said he couldn't have seen Nelson playing with a knife, because the Franksville table he was sitting at can't be seen through the window. If this is true, I

said thunderstruck, the defense is shaken, if not shattered.

"How do you know that?" I asked. "Have you looked for yourself?"

"Yes," said the Reverend Thurston Barnett.

Here at last was something I could check. So the next afternoon after seeing Father Lezak, I did so. I went behind the counter at Franksville, stood in Mr. Citron's footprints, and looked through the window.

I saw perfectly.

I saw everything: the table, the street, and Wrigley Field.

Indeed, if Barnett really did bother to look, he was even four or five feet closer the width of the counter and the intervening space — his Presbyterian nostrils pressed to the glass; because Citron says Barnett has never been behind the counter.

"Only one other man has done what you just did," said Citron.

"Who?" I asked.

"Tully," he said.

"What did he say?" I asked.

"Nothing."

So when I looked through that window, I knew Barnett is lying. That is somewhat "simplistic," I realize – but it is the truth.

And I knew for sure that Officer Nuccio is innocent.

VI

So you see, what ran over Richard Nuccio is the Communist War On Police. Indeed, Chicago Police Intelligence has already established that what you have read here is just the proverbial scratch on the surface. And the purpose of the Communist War on Police, as always, is to demoralize, discredit, and destroy our independent, local police, so that Communists can impose their totalitarian dictatorship. One major part of the plan is the rioting run by Communists in the streets – which their allies in government forbid the police to suppress – to create the impression that our local police are inadequate in training, manners, and capability. The other major part is the current attempt by conspirators in government to seize our local police – with the usual weapon of federal "aid" coupled with federal "guidelines" (that is, *controls*) inflicted by the new federal "anti-crime" law – allegedly to satisfy demands for "law and order."

The result, if successful, would be the same national police force, the same *gestapo*, Barnett and Lezak claim to be against. And it would produce the "law and order" of a totalitarian dictatorship – of a Nazi Germany – which they also claim to be against. Indeed, a national police force is a hallmark of a totalitarian dictatorship, isn't it? There couldn't be, and has never been, a dictatorship without one. Every totalitarian dictatorship needs a national police force just to keep itself in power – because it *is* a dictatorship. It makes no difference, to the victims, what color uniforms the dictators wear, what sort of concentration camps they run, or whether they call themselves Communists or Nazis – no difference at all.

So just because somebody claims to be against the Nazis doesn't mean he really is. In Communist fashion, he may simply be keeping alive the dead idea of Nazism with which to smear anyone who opposes Communism. No, the deciding factor is whether he supports or opposes what makes a Nazi Germany – and all other dictatorships – possible: concentration of power; totalitarian power. The crucial question is whether he supports or opposes the local, independent police forces which have kept America free.

The question arises: Why, then, are the Communists always calling for "local control" of our police? And the answer is that this is a typical demonstration of the Communist principle of reversal. We *already have* local control. We're trying to keep it. If enough citizens of Chicago, for instance, are dissatisfied with their police,

they can elect a different Mayor, with a mandate to appoint a Commissioner they prefer. The Communists, on the contrary, are trying to *discredit* local control – by associating it in your mind with the Communist terrorists demanding it for their agitators. As always, they are trying with perfect consistency to arrange by boomerang the *gestapo* they claim to be against.

And that is why, in this case, they chose so fine an officer as Richard Nuccio as the victim. Almost everyone wants a bad policeman punished; civilians do, and the police themselves do. A bad policeman does damage to his department. Punishing him protects the department and good, local law enforcement. But to punish a good policeman – the best, a man with twenty-six Honorable Mentions – in the name of "local control," and "good police-community relations," is to attack the system of which he is a part; to attack the local control one claims to endorse. And Nuccio just happened to get the short end of the nightstick.

What are you going to do about it?

Mayor Richard J. Daley has refused to see Mrs. Nuccio, but he had time the other day to see Hubert Humphrey, who calls himself the "biggest victim" of the Convention. Two Chicago Assistant Corporation Counsels warned Nuccio not to testify at the coroner's inquest, for fear what he said might jeopardize their defense against Communist-fronter Gertz. Nuccio obeyed and was charged with violation of Rule Number Fifty-One: refusing to testify at a coroner's inquest. Of course, the City did offer him one dollar – one – if he would sign an affidavit promising to "release and waive any and all claims for salary, rights of action or causes of action which I have or may have against the City of Chicago, arising out of any thing done or left undone from the beginning of the world down to the signing of these presents . . . ." He refused.

And Frank Sullivan, director of public relations for the Police Department, told me in his office that as far as the Department is concerned the case is closed, "because the jury found Nuccio guilty." Sullivan publishes a magazine for and about Chicago policemen – but he doesn't even know that the first Chicago policeman to be found guilty of murder in fifteen years was convicted not by a jury but a judge.

So you see, it's up to you, as always – as it should be.

What are you going to do?

You don't have to do a thing, of course – not even one. It's still a free country, if you will pardon the expression. But you see, the Nuccio case is doing what it was designed to do: demoralizing and embittering his fellow officers. If you don't, there may come a time – it is no longer an "extreme" joke to say this – when you will want a policeman, desperately, and no one will show up. And if you survive, you may soon find yourself living under a totalitarian dictatorship which would make the reign of Caligula seem like the Jefferson Administration.

So if you do nothing now, how long do you plan to wait?

Indeed, how long do Nuccio's fellow officers plan to wait? There are those trying to spread the word around the Department that Richard Nuccio is a wrong cop. But you have read the truth here. Where is he wrong? And by the way, police officers of Chicago, have you wondered where that raise you are now enjoying comes from? From the federal government, doesn't it? – which makes you federal employees – because he who pays the piper has the right to call the tune. Are you willing to be turned gradually into part of a national police force – with all that means? And if you aren't, the question is still how long you plan to wait. How much closer does it have to come? To the point at which you, too, are boobytrapped like Nuccio?

Richard Nuccio is twenty-seven years old. His ambition was always to become a

policeman. For seven years, before he succeeded in December, 1966, he was a clerk and mailman for the U.S. Post Office. Today he lives with his wife and three small children in a $100-a-month apartment, in a building you enter from an alley. So he isn't exactly an Imperialist Exploiter. He lives in the area he patrolled. Apparently he had about the same breaks as the hoodlum Nelson. Indeed, first-class attorneys like Nuccio's do not come for free. His case has already cost him about $10,000, collected in donations from fellow officers and in loans from friends and relatives; and his appeal, now being filed, will cost him $5,000 more. I suppose he could have gone on Welfare, but since his suspension he has been working at construction and minor mechanical work.

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In fact, maybe this hasn't occurred to you either, but the elderly schemers over twenty-five who got you into all of this have been playing you for suckers – just as they did the teenagers in Cuba, China, Russia, and Czecho-Slovakia, before they grabbed those countries and wiped out all rights.

As we have seen, it was publicity and organization that led to Richard Nuccio's conviction. And it is only publicity and organization that can lead to his release. Now is the time for you, the people, united, to speak. And you might begin by demanding answers to some interesting questions:

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Why is the Reverend Barnett lying?

One thing already stands out clearly: Richard Nuccio is innocent. *He must be freed* ■ ■

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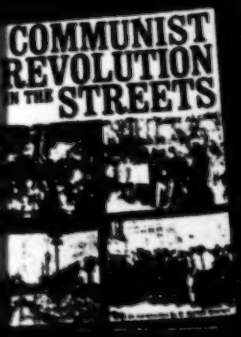

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We are rather proud of our magazine, and not at all surprised at its sizeable international circulation—with subscribers ranging from princes and cabinet ministers to sheep ranchers in Australia and cab drivers in New York. After all, while ours is a thoroughly "Conservative" magazine, it is also thoroughly exciting. We broke the first national story on the Black Muslims and predicted the Black Power movement long before it developed. We exposed Communist influence in the California grape strikes, in Martin Luther King's S.C.L.C. and in the Castroite Tijerina Movement of the American Southwest—naming names and citing detailed proofs. We established Fidel Castro's Communist background long before he was brought to power. As early as 1962 we predicted the Franco-American split and noted that Charles de Gaulle had made his deal with the Soviets. We documented Communist infiltration of the "War on Poverty"—again, and as always with us, naming the names and citing the detailed proofs. We covered the holocausts in Watts, Detroit, Newark, Washington, Cleveland, and other cities directly from the scene—telling what others refused to tell about Communist participation. We detailed the Communist manipulation of such Fronts of the Far Left as S.N.C.C., the S.D.S., R.A.M., and a number of others, more than a year before they began to make headlines. We have even dared to publish the names of American firms trading with the arsenal of the Vietcong. And, we . . .

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Dear Reader:

As we go to press we have been reliably informed that after reading Alan Stang's exposé of the activities of his revolutionary terrorists in New Mexico, which appeared in last month's *American Opinion*, Castroite generalissimo Reies Tijerina vowed to his Marxist Comrades that if Stang ever again sets foot in the State – *Reies would send someone to kill him!* Whether the threat was mere braggadocio, or whether Tijerina meant it, we do not know. But we do know that when *American Opinion's* Alan Stang goes after the facts in a story he gets them – just as he has, again, in the very important article beginning on page one.

Mr. Stang reports this month on the framing for murder of an outstanding Chicago police officer – a man with no less than twenty-six formal citations for the excellence of his police work. That this is a part of the Communist war on our police is as certain as the innocence of this officer they have chosen as their symbolic target. So important is this one, in fact, that reprints will be made immediately available.

And, while we are emphasizing importance, we want to call your special attention to Gary Allen's article here on the Council of Foreign Relations – whose conspiratorial antecedents he authenticates in what is clearly a research breakthrough of simply monumental importance.

Whether you turn first to Alan Stang or Gary Allen – or Taylor Caldwell or Medford Evans or E. Merrill Root – we think you will agree with us that this is one issue of *American Opinion* you won't be lending to even the most trustworthy friend. If he *is* a friend, you'll want to urge him to buy a copy for himself.

Sincerely,

Scott Stanley Jr.

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[The remainder of Exhibit "B" is identical to the article attached to the Complaint as Exhibit "A," except the last page, which follows:]

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One thing already stands out clearly: Richard Nuccio is innocent. *He must be freed* ◘ ◘

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[39] MOTION TO DISMISS

The Defendant moves the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim upon which relief can be granted;

2. To dismiss the action on the ground that the Court lacks jurisdiction because the amount actually in controversy is less than Ten Thousand Dollars exclusive of interest and costs.

/s/ James A. Boyle, Jr.
Attorney for Defendant

[41-45] MEMORANDUM OPINION
Filed November 18, 1969

Plaintiff, a practicing attorney, brings this diversity action for libel under Illinois law, claiming that defendant published a magazine article, and reprints thereof, designating plaintiff as a Communist or Communist sympathizer. Defendant has moved to dismiss the complaint for failure to state a claim upon which relief can be granted, or alternatively, for failure to satisfy the requisite jurisdictional amount.

Plaintiff's complaint alleges that he has been injured in his professional reputation and practice by defendant's publications. The alleged defamatory statements include representations that plaintiff has been an "official of the Marxist League for Industrial Democracy, originally known as the Intercollegiate Socialist Society, which has advocated the violent seizure of our government," that he is "preeminent" in the "Communist National Lawyers Guild," and that he is a "Leninist" and a "Communist-fronter."

The complaint generally seeks actual damages of $10,001 and punitive damages of $500,000 in each of two counts. If the libel is only a libel "per quod" rather than a libel "per se," the complaint would be defective because it fails to allege special damages which are essential to the maintenance of a per quod action. See, *e.g., Whitby* v. *Associates Discount Corp.,* 59 Ill.App.2d 337 (3d Dist. 1965); *Continental Nut Company* v. *Robert L. Berner Company,* 393 F.2d 283 (7th Cir. 1968). The defendant contends that calling the plaintiff a Communist amounts only to a libel per quod.

Prior cases have uniformly held that it is libel per se under Illinois law to falsely label one a Communist. *Dilling* v. *Illinois Publishing and Printing Company,* 340 Ill.App. 303 (1st Dist. 1950); *Spanel* v. *Pegler,* 160 F.2d 619 (7th Cir. 1947); *cf. Ogren* v. *Rockford Star Printing Company,* 288 Ill. 405 (1919). Recent Illinois Appellate Court cases in two districts have, however, equated the standards for libel per se with those for slander per se.[1] Assuming that the resultant narrowing of the libel per se category is now the law of Illinois, plaintiff's complaint nonetheless establishes a per se case of defamation, for it meets the requirement that the challenged statements "prejudic[e] a particular party in his profession or trade." *Whitby* v. *Associates Discount Corp., supra,* at 340.

The publication which is here in dispute concerns plaintiff's participation as counsel in certain law suits, and therefore reflects primarily and directly upon his

---

[1] *Whitby* v. *Associates Discount Corp., supra*; *Mitchell* v. *Peoria Journal-Star, Inc.,* 76 Ill.App.2d 154, 158 (3d Dist. 1966); *Grabavoy* v. *Wilson,* 87 Ill.App.2d 193, 202 (3d Dist. 1967); *Coursey* v. *Greater Niles Township Publishing Corp.,* 82 Ill.App.2d 76, 81 (1st Dist. 1967), *aff'd.* 40 Ill.2d 257, 261 (1968); *Reed* v. *Albanese,* 78 Ill.App.2d 53, 58 (1st Dist. 1966).

profession and practice of law. As an attorney, plaintiff is an officer of the court and has sworn to uphold the Constitution and laws of the United States. Communist doctrine, teaching among other things the propriety of violent overthrow of American government, is of necessity inconsistent with this oath and with the attorney's calling. An allegation of Communist affiliations must necessarily cast grave doubts upon an individual's qualification to uphold, apply and interpret our system of laws, a system opposed by Communist theory. *Cf. Grant* v. *Reader's Digest Ass'n.,* 151 F.2d 733 (2d Cir. 1945). The instant charges "impute to him a want of the requisite qualifications to practice law . . ." and are therefore actionable per se. *Colmar* v. *Greater Niles Township Publishing Corp.,* 13 Ill.App.2d 267, 270 (1st Dist. 1957).

Defendant relies primarily on *Ward* v. *Forest Preserve District,* 13 Ill.App.2d 257 (2d Dist. 1957), holding that calling one a Communist is not slander per se. Although that opinion stated that the alleged defamation did not injure plaintiff in his profession, it nowhere identified what that profession was and is therefore not dispositive of the instant case. More analogous is *Remington* v. *Bentley,* 88 F.Supp. 166, 171 (S.D.N.Y. 1949), holding that a charge of Communism injured plaintiff in his profession as an economist. "It is natural to presume that an economist who is a Communist adheres to the economic theories of Communism, which are repugnant to the theories historically accepted in this Country." And see *Maric* v. *Vukotish,* 178 F.Supp. 727 (N.D.Ill. 1959), holding that labeling a person a Communist is slander per se.

Because plaintiff's complaint sufficiently avers a libel per se, actual and punitive damages may be recovered without pleading special damages. Accordingly, defendant's

challenge to the jurisdictional amount must fail. See, *e.g.*, *Lorillard* v. *Field Enterprises*, 65 Ill.App.2d 65 (1965).

For the reasons heretofore assigned, an order has been entered today denying the motion to dismiss.

Enter: /s/ Bernard M. Decker
United States District Judge.

[61-64] ANSWER

Now comes the defendant, by its attorney, James A. Boyle, Jr., and answers the complaint herein as follows:

1. The allegations of Paragraph 1 are admitted.

2. The jurisdictional averment of Paragraph 2 is admitted.

3. Defendant makes no answer to Paragraph 3 of the complaint, except to admit that plaintiff is a public figure as contended therein.

4. Defendant has no specific knowledge of the averments of Paragraph 4 of the complaint, but has no reason to doubt the truthfulness thereof.

5. The allegations of Paragraph 5 of the complaint are denied.

6, 7, 8, 9 & 10. Defendant admits the allegations of Paragraphs 6, 7, 8, 9 and 10 of the complaint.

11. Defendant denies the allegations of Paragraph 11.

12. The allegations of Paragraph 12 are denied and, further answering the said paragraph, the defendant makes no response to the plaintiff's defense of the National Lawyers League because of the irrelevancies of plaintiff's comments in that regard.

13. The entire of Paragraph 13 is denied, except that defendant admits that it did not make such inquiries of

plaintiff or of his family. Defendant contends that the phrase "his associates" is a characterization of relationships peculiarly within the knowledge of the plaintiff, and therefore too vague to require a response.

14. In answering Paragraph 14 of the complaint, the defendant states that it denies the plaintiff's conclusions contained in his digest of defendant's published article. Further, the defendant denies that it should be required to answer the matters raised in that paragraph as plaintiff admits that these matters are not relevant to the issues herein.

15. The defendant admits the pendency of the various court actions as of the time of the filing of the complaint herein, but denies the remaining allegations of Paragraph 15.

16. Defendant denies the entire of Paragraph 16 and denies that plaintiff is entitled to judgment in any sum.

Answer To Count II Of The Complaint

1-5. Defendant adopts and re-alleges its answers to Paragraphs 1 through 5 of Count I of the complaint as and for its answers to Paragraphs 1 through 5 of Count II of the Complaint.

6 & 7. Paragraphs 6 and 7 are admitted.

8 & 9. Defendant admits Paragraphs 8 and 9 of Count II.

10-15. Defendant adopts and re-alleges its answers to Paragraphs 11 through 16 of Count I as and for its answers to Paragraphs 10 through 15 of Count II of the complaint.

For a further and separate defense the defendant alleges:

1. The publication in which the controverted articles were printed is a national magazine widely sold in the United States and in other countries. Its editorial policy is to promote the cause of political conservatism and constitutional democracy. It implements this policy by exposing to public view the activities and philosophies of all persons and organizations which are either Communist or which tend to achieve the objectives of Communism. It views the Communist movement as a present-day threat to traditional American institutions and as a matter of grave public interest and concern.

2. Pursuant to its policy aforesaid, it published the articles in the belief that it is the aim of the Communist conspiracy to undermine the processes of law enforcement by doing anything to discredit, humiliate and harass police authority at all levels. Further, it believed that Officer Nuccio did not receive a fair trial.

3. The defendant denies that the words used in the said article, as they related to plaintiff, in their natural and ordinary meaning, impute to the plaintiff any want of ability or integrity as a lawyer, but portray him as one who associates with Communists and whose activities in the Nuccio matter further the plan of discrediting the police, thus advancing the cause of Communism.

4. Insofar as the allegedly defamatory words were true in the confines of the context intended, and the opinions were fair comments all made in good faith and without malice and that the matters of a Communist conspiracy, and the Nuccio trial itself, were and are matters of public interest for the public benefit they are therefore privileged.

5. The plaintiff admits, in his complaint, that he does not qualify as a person of such quiet anonymity, so as

to fall beyond the scope of the privilege pleaded in this separate defense. He has for years written and published articles of opinion in matters of public interest, lectured extensively in these areas and has appeared innumerable times on radio and television, locally and nationally, as panelist or guest speaker in many areas of public interest and concern. Further, he is currently so engaged. In addition to the foregoing, he is a public official in his capacity as delegate to, and chairman of the Bill of Rights Committee of the Illinois Constitutional Convention and was, at the time of the publication of the alleged defamatory articles, an intended candidate for that public office. The defendant concludes that the plaintiff was, at the time of the publication of the article both a "public official" and a "public figure" within the scope of the privilege asserted in this defense.

Wherefore, defendant prays for judgment and its costs.

/s/ James A. Boyle, Jr.
Attorney for Defendant

[150-155] AMENDED ANSWER

Now comes the defendant, by its attorney, James A. Boyle, Jr., and answers the complaint herein as follows:

1. The allegations of Paragraph 1 are admitted.

2. The jurisdictional averment of Paragraph 2 is admitted.

3. Defendant makes no answer to Paragraph 3 of the complaint, except to admit that plaintiff is a public figure as contended therein.

4. Defendant has no specific knowledge of the averments of Paragraph 4 of the complaint, but has no reason to doubt the truthfulness thereof.

5. The allegations of Paragraph 5 of the complaint are denied.

6. The defendant admits that, on March 18, 1969 it mailed the first copies of the pamphlet referred to in Paragraph 6 of the complaint, but denies that it distributed the same "to the public at large". Rather, that was the first order for reprints of the article referred to as Exhibit "A".

7. The allegations of Paragraph 7 are denied. Further answering the said Paragraph, defendant states that the April, 1969 issue of American Opinion was mailed from its office in Massachusetts from March 3, 1969 through March 7, 1969 and that the reprints of the article in American Opinion came by way of orders requested by readers of American Opinion magazine after its publication.

8. Defendant admits the allegations of Paragraphs 8, 9 and 10.

11. Defendant denies the allegations of Paragraph 11.

12. In answer to Paragraph 12, the defendant states that it has no knowledge concerning Mr. Gertz's membership in the Marxist League for Industrial Democracy, the League for Industrial Democracy or the Intercollegiate Socialist Society. Further answering the said Paragraph, defendant states that plaintiff was an officer of the National Lawyers Guild during the earliest years of its formation, during which said time the National Lawyers Guild was cited by the House Unamerican Affairs Committee, of the Congress of the United States, as a "communist front organization". Further answering the said Paragraph, the defendant neither admits nor denies that the conventions of the said National Lawyers Guild were attended and addressed by people of "great stature and

reputation", but contends that such matters are not relevant to the issues in this case.

13. The entire of Paragraph 13 is denied, except that defendant admits that it did not make such inquiries of plaintiff or of his family. Defendant contends that the phrase "his associates" is a characterization of relationships peculiarly within the knowledge of the plaintiff, and therefore too vague to require a response.

14. In answering Paragraph 14 of the complaint, the defendant states that it denies the plaintiff's conclusions contained in his digest of defendant's published article. Further, the defendant denies that it should be required to answer the matters raised in that paragraph, as plaintiff admits that these matters are not relevant to the issues herein.

15. The defendant admits the pendency of the various court actions as of the time of the filing of the complaint herein, but denies the remaining allegations of Paragraph 15.

16. Defendant denies the entire of Paragraph 16 and denies that plaintiff is entitled to judgment in any sum.

Amended Answer To Count II Of The Complaint

1-5. Defendant adopts and re-alleges its answers to Paragraphs 1 through 5 of Count I of the Complaint as and for its answers to Paragraphs 1 through 5 of Count II of the complaint.

6-9. Paragraphs 6 through 9 of Count II of the complaint are admitted.

10-15. Defendant adopts and re-alleges its answers to Paragraphs 11 through 16 of Count I as and for its answers to Paragraphs 10 through 15 of Count II of the complaint.

First Separate Defense

1. The publication in which the controverted articles were printed (and this defense relates to the reprint of the said article) is a national magazine widely sold in the United States and in other countries. Its editorial policy is to promote the cause of political conservatism and a form of government known as a "Republic". It implements this policy by exposing to public view the activities and philosophies of all persons and organizations which are either Communist or which tend to achieve the objectives of Communism. It views the Communist movement as a present-day threat to traditional American institutions and as a matter of grave public interest and concern.

2. Pursuant to its policy aforesaid, it published the articles in the belief that it is the aim of the Communist conspiracy to undermine the processes of law enforcement by doing anything to discredit, humiliate and harass police authority at all levels. Further, it believed that Officer Nuccio did not receive a fair trial.

3. At the time of the publication of the article, and for many years prior thereto, the plaintiff was a "public figure" by virtue of being the author of books, newspaper columns, pamphlets, all of which covered wide areas of public interest and which were published all over the United States. Further, during his lifetime, and continuing through the period of publication of this article, and continuing at the present time, he has lectured in public and private forum, appeared in the State of Illinois and nationally on radio and television, innumerable times, as panelist or guest speaker.

4. At the time of the publication of this article, and for a long time prior thereto, plaintiff was a public official in his role as member of, or counsel to, public and

quasi-public commissions and was an intended candidate for delegate to the Illinois Constitutional Convention.

5. Preliminary to the Nuccio criminal trial, Mr. Gertz attended the inquest on the body of a person named Nelson in his capacity as counsel for the family of the decedent, Nelson. During the course of that said inquest he questioned witnesses and otherwise actively engaged in the inquest. As a result of the inquest, Officer Nuccio was bound over to the Grand Jury and, subsequently, indicted.

6. The trial of Officer Nuccio was widely publicized in the City of Chicago and was a public issue.

7. For many years prior to the date of the publication of the controverted article, there was a nation-wide public issue in the United States in which this defendant, and many other persons and corporations, participated, and in which the Government of the United States was actively involved concerning the contention and belief that the Communist conspiracy in the United States actively sought to undermine the processes of law enforcement by doing anything to discredit, humiliate and harass police authority at all levels. The article was published by the defendant in the belief that the Nuccio trial was gravely affected by the conspiracy aforesaid and that the participants in the trial, and the matters preliminary to trial, were either conspirators or were—innocently or otherwise—accomplishing the purposes of the said conspirators.

8. Prior to the publication of the controverted article, and at the time of the promulgation thereof, this defendant had no knowledge concerning the plaintiff other than the article itself. In publishing the article it relied solely upon the reputation of the free-lance writer, Mr. Stang, for accuracy. The defendant was in possession of Mr.

Stang's article for a brief time, checking it only for mechanical accuracy and style and to supply photographs and captions. At the time of the publication of the article the defendant had no knowledge that there would be any challenge to the truthfulness of the article as written, and no reason to believe that it was not true.

9. The matters complained of as libelous in the complaint were privileged under the guarantees of the First and Fourteenth Amendments to the Constitution of the United States in that they constituted fair comment and were made without actual malice.

Second Separate Defense

The defendant denies that the words used in the said article, as they related to plaintiff, in the natural and ordinary meaning, impute to the plaintiff any want of ability or integrity as a lawyer, but portray him as one who associates with Communists and whose activities in the Nuccio matter furthered the plan of discrediting the police, thus advancing the cause of Communism. Thus, the allegedly defamatory words were true in the confines of the context intended.

Wherefore, defendant prays for judgment and its costs.

/s/ James A. Boyle, Jr.
Attorney for Defendant

ORDER

On Motion Pltff, order Par. 3 of amended answer as to Par. 3 of Ct. I and Par. 3 of Ct. II of complaint hereby stricken.

Par. 1 & 2 of First Separate Defense of said amended Answer are stricken.

Motion to Strike Par. 7 of First Separate Defense of said amended answer is denied.

Second Separate Defense of said amended Answer is stricken. (Draft) Decker, J.

[97-100] MOTION FOR SUMMARY JUDGMENT

Now comes the defendant by James A. Boyle, Jr., its attorney, and pursuant to Rule 56 of the Federal Rules of Civil Procedure moves the Court to enter summary judgment for the defendant and as grounds and reasons shows as follows:

1. That in both its original and amended answer defendant has raised as a separate and complete defense:

(a) Plaintiff is a "public figure" or "public official" or both.

(b) That the subject matter of the article complained of related to "public issues" i.e., the nationwide controversy concerning the conduct of the police authority at all levels and the processes of law enforcement and, in addition, the widely publicized murder trial of Police Officer Nuccio in Illinois.

(c) That the alleged libelous matter was constitutionally privileged as "fair comment made without actual malice."

2. That there is no genuine issue as to any material fact with reference to the matters raised in the said separate defenses as more particularly appears from the documents attached hereto and made a part hereof.

3. That plaintiff's judicial admissions contained in the pleadings, the earlier proceedings before the Court, in the course of his deposition and other facts concerning which the Court may take judicial notice, make the conclusion indisputable that plaintiff is a public figure and a public official.

(a) Paragraph 3 of the Complaint alleges in part,

> "He belongs to the American, Illinois State, Federal, Seventh Circuit and Chicago Bar Associations, Appellate Lawyers Association of Illinois, and the Decalogue Society of Lawyers, and has served on the committees of these groups and has been president of the latter organization. He has received awards and citations for public services from several groups. He has written books, pamphlets, articles and reviews, some of his work appearing in leading newspapers, magazines and encyclopedias. Biographical notices of him appear in several standard reference works, including *Who's Who in America, Who's Who in the Midwest,* and *Contemporary Authors,* all of which are readily available to the public as a whole, including defendant."

(b) Defendant attaches hereto as Exhibit 1 and makes a part hereof plaintiff's motion of April 30, 1970 seeking a protective order limiting the scope of plaintiff's deposition.

(c) Defendant attaches hereto as Group Exhibit 2 Pages 3 through 11 of plaintiff's deposition and a memorandum prepared by plaintiff incorporated as an exhibit during the deposition.

(d) Defendant attaches hereto as Group Exhibit 3 Pages 19, 20, 24, 26, 28, 31, 34, 35, 36 and 39 of deposition.

(e) That plaintiff's status as a public figure is further defined and amplified throughout the course of his deposition, the original of which was heretofore filed herein.

(f) That plaintiff was an elected delegate to the Illinois Constitutional Convention and served as Chairman of its Bill of Rights Committee. Pages 27 through 34 of plaintiff's deposition further reflect his status as a public official. Copies are attached hereto as Group Exhibit 4.

4. Plaintiff concedes at Pages 48 and 49 of his deposition that a public issue existed as to the controversy concerning police and law enforcement methods and procedures. Plaintiff further concedes in Paragraphs 14 and 15 of his Complaint that a Policeman named Nuccio was being tried for murder in the Courts of Illinois. The Affidavit of Scott Stanley, Jr. attached hereto and made a part hereof reflects the front page publicity in Chicago during said trial and the existence of the nationwide public issue concerning metropolitan police forces.

5. That as more particularly appears in the Affidavit of Scott Stanley, Jr., the Managing Editor of *American Opinion,* attached hereto and made a part hereof, no issue of fact exists as to the question of malice. Further, that the said Scott Stanley, Jr., as the Managing Editor of *American Opinion,* and as the person who had the ultimate responsibility for the publication of the article in issue, published the said article in reliance upon the reputation of the independent, free-lance author of the said article, Allen Stang, on the prior experience of defendant with the accuracy and authenticity of earlier articles written by the said Stang and published by *American Opinion.*

/s/ James A. Boyle, Jr.
Attorney for Defendant

[156-158] MEMORANDUM OPINION
Filed September 16, 1970

Cross motions for summary judgment have been filed in this libel action.

The libel alleged is contained in an article published in defendant's magazine, American Opinion, dealing with the murder trial of a Chicago policeman. The article referred to plaintiff, an attorney, as a "Leninist" and a "Communist-fronter" and contained additional allegations in a similar vein. Defendant's theory in support of its motion is that plaintiff is a "public official" or "public figure", that defendant was not motivated by actual malice when it published the disputed article, and that any defamatory matter contained therein is therefore privileged. *New York Times* v. *Sullivan,* 376 U.S. 254 (1964); *Time, Inc.* v. *Hill,* 385 U.S. 374 (1967); *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130 (1967). Plaintiff's theory is that there is no truth to the allegations of Communist sympathies, that he is not a public figure, and that defendant is chargeable with actual malice.

The only evidence submitted relating to the issue of actual malice is the affidavit of Scott Stanley, Jr., managing editor of defendant's magazine. In brief, this affidavit states that the author of the challenged article was a "free-lance" writer, that a number of his works had previously been used by defendant, and that affiant had received no information during such time which "seriously" challenged the truth of the factual averments in the author's writings. He further stated that he had therefore come to rely on the accuracy of his articles and conducted no investigation into the truth of the allegations in suit.

When there is a factual dispute as to the existence of actual malice, summary judgment is improper. See *Goldwater* v. *Ginzburg,* 261 F. Supp. 784 (S.D.N.Y. 1966), *aff'd.* 414 F. 2d 324 (2d Cir. 1969), *cert den.* 396 U.S. 1049 (1970):

> "The issue of actual malice on the part of defendants seems particularly inappropriate for disposition by summary judgment because it concerns 'motive' intent, and subjective feelings and reactions.'" (Citations omitted) (261 F. Supp. at 788)

In the instant case a jury might infer from the evidence that defendant's failure to investigate the truth of the allegations, coupled with its receipt of communications challenging the factual accuracy of this author in the past, amounted to actual malice, that is, "reckless disregard" of whether the allegations were true or not. *New York Times* v. *Sullivan, supra,* at 279-280. And whether these challenges to the author's accuracy were "serious" or not is a matter for the jury, rather than defendant, to determine. See *St. Amant* v. *Thompson,* 390 U.S. 727, 732 (1968); *Curtis Publishing Co.* v. *Butts, supra,* at 169-170 (Warren, C.J., concurring). This court cannot conclude, as a matter of law, that defendant either is or is not chargeable with actual malice.

In accordance with the foregoing, an order has been entered denying plaintiff's and defendant's motions for summary judgment. The trial date has been reset for September 21, 1970, and discovery shall remain open until that date. It is further ordered that defendant's motion for leave to file an amended answer is granted.

Enter: /s/ Bernard M. Decker
United States District Judge

REFUSED INSTRUCTIONS

[171] IPI 5.01 Pl. 5:

If a party to this case has failed to offer evidence or to produce a witness within his power to produce, you may infer that the evidence or testimony of the witness would be adverse to that party if you believe each of the following elements:

1. The evidence or witness was under the control of the party and could have been produced by the exercise of reasonable diligence.

2. The evidence or witness was not equally available to an adverse party.

3. A reasonably prudent person under the same or similar circumstances would have offered the evidence or produced the witness if he believed it to be favorable to him.

4. No reasonable excuse for the failure has been shown.

[172]

If you find that the alleged libelous matter was fair comment on a public issue, then you may not return a verdict in favor of the plaintiff.

GIVEN INSTRUCTIONS

[173] Pl. 14:

The plaintiff's claim has two essential elements, as follows:

First, that the defendant published the magazine article and reprint pamphlet complained of herein;

Second, that the said libels were read by persons other than the plaintiff, namely members of the general public.

The plaintiff has the burden of establishing the essential elements of his case by a preponderance of the evidence. If you find that he has done so you will find for the plaintiff. If you find that plaintiff has not so established either of these elements, then you must find for the defendant.

[174]

In assessing damages you may also award plaintiff such amount as will punish defendant for publishing the untrue defamatory statements concerning plaintiff.

[175] Pl. 13:

If you decide for the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate him for any damages he has suffered that were directly and proximately caused by the articles complained of. When I use the expression "proximate cause" I mean that cause which, in natural or probable sequence, produced the injury complained of. In fixing the amount of damages you are to take into account the following elements:

1. his prominence in the community where he lives.
2. his professional standing.
3. his character.
4. his good name.
5. his reputation.
6. the mental suffering and anguish occasioned by the publication.
7. the extent of the circulation and republication of the libels.

[176] Pl. 12:

Where the publication complained of is libelous per se and the defendant has not proved the truth, the plaintiff is entitled to recover compensatory damages such as will fairly compensate him for the injury he has sustained, if any. Mental suffering and injury to reputation as the result of a libelous publication need not be proved but may be inferred from the nature of the injury.

[177] Pl. 11:

Since this article and reprint pamphlet are libelous per se, plaintiff need not show that he has suffered any actual damage as a result of this article in order to entitle him to a verdict in this matter.

[178] Pl. 15:

The fact that false statements are obtained from another source does not provide a defense to a libel suit. Put simply, a defamatory statement can be repeated and repetition or republication does not render the statement true or correct, nor excuse the defendant from liability therefor. The defendant may not rely upon the author to justify its actions.

[179] Pl. 10:

The article and reprint pamphlet involved herein, insofar as it relates to plaintiff, is libelous per se, because in calling plaintiff a communist, Leninist and communist fronter, it imputes to him a want of the requisite qualifications to practice law, in that a belief in communism is inconsistent with his oath to support the Constitution and Laws of the United States government, and casts

grave doubts upon his qualification to uphold, apply and interpret our system of laws which is opposed to Communist theory.

[180] Pl. Instr. 4:

In reading defendants' articles, the articles must be read as a whole and the words given their natural and obvious meaning. The headlines, sub-headlines, pictures, and captions in the articles must be construed in the context of the articles when read as a whole.

[181] Pl. 9:

The plaintiff has filed suit seeking damages on account of libels in the forms of a magazine article and a reprint pamphlet thereof published by the defendant of and concerning him.

[182] IPI 2.01 Pl. 8:

You are the sole judges of the credibility of the witnesses and of the weight to be given to the testimony of each of them. In determining the credit to be given any witness you may take into account his ability and opportunity to observe, his memory, his manner while testifying, any interest, bias or prejudice he may have, and the reasonableness of his testimony considered in the light of all the evidence in the case.

[183] IPI 2.07 Pl. 7:

In deciding whether any fact has been proved, it is proper to consider the number of witnesses testifying on one side or the other as to that fact, but the number of witnesses alone is not conclusive if the testimony of the lesser number is more convincing.

[184] IPI 21.01 Pl. 6:

When I say that a party has the burden of proof on any proposition, or use the expression "if you find," or "if you decide", I mean you must be persuaded, considering all the evidence in the case, that the proposition on which he has the burden of proof is more probably true than not true.

[185] IPI 1.04 Pl. Instr. 3:

In considering the evidence in this case you are not required to set aside your own observation and experience in the affairs of life but you have a right to consider all the evidence in the light of your own observation and experience in the affairs of life.

[186] IPI 1.02 Pl. Instr. 2:

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

[187] Plaintiff's Instruction (1)
(IPI 1.01 Modified)

1. Faithful performance by you of your duties is vital to the administration of justice.

2. The law applicable to this case is contained in these instructions and it is your duty to follow them. You must consider these instructions as a whole, not picking out one instruction and disregarding others.

3. It is your duty to determine the facts, and to determine them from the evidence produced in open court.

You are to apply the law to the facts and in this way decide the case. Neither sympathy nor prejudice should influence you. Your verdict must be based on evidence and not upon speculation, guess or conjecture.

4. The evidence which you are to consider consists of testimony of the witnesses and the exhibits offered and received. The production of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings. (And you are not to consider exhibits to which an objection was sustained or testimony or exhibits which were ordered stricken.)

5. Arguments, statements, and remarks of counsel are intended to help you in understanding the evidence and applying the law, but are not evidence. If any argument, statement or remark has no basis in the evidence, then you should disregard that argument, statement or remark. (However, there is one exception to this rule; an admission of a fact by counsel is binding on his client.)

[188]

6. (The corporate defendant in this case is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.)

7. Neither by these instructions nor by any ruling or remark which I have made do I or have I meant to indicate any opinion as to the facts.

[190] VERDICT

We, the Jury, find the defendant, guilty and assess the plaintiff's damages at the sum of Fifty Thousand only—($50,000.00).

[Signatures of Jurists]

JUDGMENT ON VERDICT

Seealed verdict opened in court.

Jury returns following verdict:

"We, the Jury, find the Defendant guilty and assess the Plaintiff's damages at the sum of $50,000.00."

Judgment entered on the verdict in favor of Plaintiff and against Defendant for damages in amount of $50,000.00 and costs.—Decker, J.

[194-198] MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND IN THE ALTERNATIVE, MOTION FOR NEW TRIAL

The defendant, Robert Welch, Inc., respectfully moves the Court to enter judgment herein in favor of the defendant, notwithstanding the verdict of the jury entered in this cause on September 23, 1970; and, as grounds for such motion, respectfully shows to the Court:

1. Defendant presented, as one defense to the plaintiff's action, that plaintiff was a "public figure", by virtue of being the author of books, newspaper columns, pamphlets, all of which covered wide areas of public interest and which were published all over the United States, and by virtue of having lectured in public and private forum, appeared in the State of Illinois and nationally on radio and television, many times as a panelist or guest speaker.

2. The facts concerning plaintiff's status as a "public figure", as alleged in Paragraph 3 of the First Separate Defense of defendant's answer, were supported and confirmed by judicial admissions as follows:

(a) Paragraph 3 of plaintiff's complaint.

(b) Motion of plaintiff filed herein on April 30, 1970, seeking protective order limiting the scope of plaintiff's deposition.

(c) And the above facts, which establish the status of plaintiff, as a "public figure" were repeated by plaintiff, during his testimony upon trial of this case.

(d) Plaintiff's status, as a "public figure", was further abundantly established by copies of newspaper articles, published in the City of Chicago, offered in evidence as defendant's Group Exhibit "C", 1 through 43.

3. The undisputed evidence in this case reveals that the plaintiff injected himself into a controversy of great public interest, involving a charge of murder against a Chicago policeman, Officer Richard Nuccio; and, in connection therewith, the plaintiff appeared at the Coroner's inquest upon the body of Ronald Nelson, whom Officer Nuccio was charged with murdering; and, during the course of such inquest, the plaintiff actually interrogated witnesses, and participated in the proceeding, in a capacity as legal representative of the family of the decedent. By reason of such activity, participating in a statutory hearing, the plaintiff became a defacto public official.

4. By reason of the status of plaintiff, as a "public figure" and a "defacto public official", he was precluded from recovering from defendant damages for alleged libel, without proof that such libel was published by the defendant, with actual malice; and there is no evidence in the record of this cause establishing such actual malice.

5. Upon conclusion of plaintiff's evidence, the issues herein set forth were presented to the Court by defendant's motion for directed verdict, which was erroneously overruled by the Court.

Wherefore, defendant prays that the Court enter a judgment herein for defendant, notwithstanding the verdict of the jury in favor of plaintiff.

Motion For New Trial

In the alternative, and separate and apart from issues raised in defendant's motion for judgment notwithstanding the verdict, as above set forth, the defendant respectfully moves the Court to vacate and set aside the verdict of the jury in this cause, as entered herein on September 23, 1970, and the Court's judgment of the same date, as entered upon the said verdict; and as grounds for such motion, defendant respectfully shows to the Court:

1. The Court erred in overruling defendant's motion to dismiss plaintiff's complaint, as evidenced by the Court's order and opinion entered herein on November 18, 1969.

2. The Court erred in overruling defendant's motion for summary judgment, as evidenced by the Court's memorandum opinion and order dated September 16, 1970.

3. The Court erred in overruling defendant's motion to postpone the trial of this case, and to extend the time for defendant to complete its discovery, as evidenced by the Court's order dated September 14, 1970.

4. The Court erred in striking certain allegations from defendant's Amended Answer, as evidenced by minute order entered in this cause on September 21, 1970.

5. The Court erred in ordering, on September 14, 1970, that defendant's discovery, and preparation for trial, should be restricted to a period of one week, and forced defendant to proceed to trial on September 21, 1970.

6. The Court erred in overruling defendant's motion for continuance on September 21, 1970, and forcing defendant to trial, after reasonable and proper grounds for continuance were submitted to the Court, as follows:

(a) Counsel for defendant advised the Court that the trial of Officer Nuccio, who was one of the subjects of the alleged libelous article, was scheduled for October 2, 1970; and, until after such trial, defendant was unable to interrogate Officer Nuccio, the prosecuting attorneys, the defense counsel, and prospective witnesses, all of whom were precluded from submitting to depositions, or other discovery proceedings, until after conclusion of the criminal trial; and defendant was further precluded from using any of the said parties as witnesses in the trial of the instant case.

7. The Court erred in refusing, over the objection of defendant, to admit in evidence relevant, competent and material evidence offered by defendant upon the law of libel under the First Amendment to the Constitution of the United States, as construed by the United States Supreme Court, and under the law of the State of Illinois.

8. The Court erred in giving to the jury, over the objection of defendant, instructions which were contrary to the Constitution of the United States, and the law of Illinois, paricularly instructions which charged the jury that the statements of defendant concerning plaintiff were libelous per se, and instructing the jury as to awarding damages to plaintiff in such amount as "will punish de-

fendant for publishing *the untrue defamatory statements* concerning plaintiff."

9. The Court, having instructed the jury as to awarding damages to plaintiff in such amount as "will punish defendant for publishing the untrue, defamatory statements concerning plaintiff" erred in providing to the jury forms of verdicts which did not separate actual from punitive damages.

10. The Court erred in refusing defendant's tendered instruction concerning "fair comment on a public issue", and presenting the case to the jury in such manner as to deprive the defendant of its defense of fair comment upon a matter of public importance.

Wherefore, defendant prays in the alternative, after presentation of its motion for judgment notwithstanding the verdict, that the Court vacate and set aside the verdict and judgment in this cause, and grant the defendant a new trial upon the above grounds, which materially affected the rights of defendant, and deprived defendant of a fair trial.

/s/ James A. Boyle, Jr.
Attorney for Defendant

[208] NOTICE OF APPEAL

Notice is hereby given that Elmer Gertz, plaintiff above named, hereby appeals to the United States Court of Appeals for the Seventh Circuit from the order setting aside the jury verdict in this cause and granting defendant's motion for judgment notwithstanding the verdict and entering judgment for defendant, entered in this action on December 8, 1970.

Elmer Gertz
By /s/ Wayne B. Giampietro
Attorney for plaintiff
and pro se

PROCEEDINGS, SEPTEMBER 21, 1970:

17 Mr. Feldman: Your Honor, I am Dan Feldman; I am here this morning on behalf of the Sun-Times and Daily News. We are not a party to this litigation, however, we were, at 9:00 o'clock—our librarian at 9:00 o'clock this morning was served with a subpoena asking for material by the Defendant in this case.

I would like to orally move to quash that. I can argue it at your Honor's convenience and I don't know what this is; what the most propitious time—

The Court: What material is involved? What material is being subpoenaed?

Mr. Feldman: Your Honor, the subpoena asks for seven specific copies of the Sun-Times or Daily News, all of which are available in the Public Library, and for the entire morgue file on Mr. Elmer Gertz, a Chicago attorney.

My grounds for moving to dismiss it are—well, let me start with a little background, your Honor: You may know that Judge Garippo for the State Courts
18 has issued an order on the Clerk prohibiting the issuance of any subpoena directed to a newspaper unless there has been a prior hearing on the need and the relevancy of that subpoena.

That order from Judge Garippo arose out of a showing by the newspapers that they received something like over 100 subpoenas in the last year, mostly related to situations in which the newspapers were simply asked to do research that the parties should have been doing, and in most cases, criminal cases,

but people have been using us as an investigating arm, and that's not a newspaper's proper function.

Your Honor may also know that the Attorney General for the Department of Justice has issued a series of guidelines; they are now two months old, I think, which provide roughly the same thing. You cannot subpoena a newspaper—the Justice Department is prohibited from subpoenaing a newspaper, unless it has made a prior showing to Washington with respect to the need and relevancy for that kind of thing.

Now, insofar as I am aware, the problem has not been dealt with yet in civil cases in the United States
19 District Court, and this kind of case, which I assume is a libel case—

Mr. Boyle: Yes.

Mr. Feldman: Is the one which raises the problem.

My grounds for moving to dismiss are, first of all, that it is an abuse of this Court's process to serve a subpoena at 9:00 o'clock on Monday morning to be responded to at 10:00 o'clock Monday morning. I don't—I don't know the circumstances of this setting for trial but I can't believe that there wasn't an opportunity to give somewhat more notice. I think that it is simply abusive to try to put a guy in contempt on one hours' notice. He might not have arrived, as I didn't, your Honor, to work until ten minutes of ten in the morning, and he would have been in contempt before he had ever gotten to work.

Secondly, your Honor, I think an unsorted subpoena like this which seems to reach for material that is available at the Public Library, and it seems to be all back copies of the newspapers of one kind or another, ought to be satisfied by the Defendant

going to the Public Library and getting the information. There is no need to impose upon the newspaper for this kind of thing.

I might say with respect to the specific editions that he has asked for, for the specific copies that he has asked for, they physically do—

The Court: Don't you want to sell your own newspapers?

Mr. Feldman: They don't exist, your Honor. We don't keep them. These are back three years. We microfilm them, and the best that we could do for them is to microfilm a full newspaper for him, and that's a silly—and print it out—and that's a silly thing to do because he only wants one page, which he can get out of the Public Library, and they have a microfilm machine.

Insofar as the subpoena asks for the full morgue file on Mr. Gertz, I have no idea what's in that morgue file, but Mr. Gertz has been a prominent attorney for many years; I think that he is at this—I think that he is violating the First Amendment rights of the newspaper in reaching back for that kind of material, which may or may not be relevant to anything in this lawsuit, and we are a third party —and I would be glad to enlarge on that argument, your Honor, it's the one that we made to Judge Garippo.

I suspect Mr. Gertz may also have some rights in the premises in a subpoena that reaches back for his full life history.

The morgue is available for the internal research purposes of a newspaper. It contains lots of unsorted material. It is a little like getting out of a file an unsorted F.B.I. dossier and giving a party

to a private lawsuit the power to disseminate that unsorted information anyplace or in anyway that he wants to. I regard that as a very dangerous practice, your Honor, and it ought not to go ahead.

Mr. Boyle: May it please the Court.

Mr. Giampietro: Your Honor, may I—before Mr. Boyle replies, may I say something on behalf of the Plaintiff. In the same way, we just found out about these subpoenas this morning when we arrived in court.

I would also object on the ground that, first of all, they are not relevant to this cause; secondly, they
22 are all hearsay and they would not be admissible in any event. So I would join—

The Court: We haven't reached that point yet.

Mr. Novoselsky: Your Honor?

The Court: Yes?

Mr. Novoselsky: Your Honor, I—

The Court: You are here representing whom?

Mr. Novoselsky: I am representing the Superintendent of Police, your Honor.

Mr. Boyle: Now, Judge, can we please have one of these at a time. This is a—this is another subpoena.

The Court: Yes.

Mr. Boyle: May I respond to this one?

The Court: Yes, you may.

Mr. Boyle: I don't have that good a memory.

Now, in the first place, the only reason these subpoenas were served with respect to these newspapers was because of my obligation to anticipate the difficulties of proof in showing that they are the documents, the documents that they are supposed to be.

This is no substitution for investigation. I have in
23 my brief case Xerox copies of everything that I want from them, you see.

But when I anticipate coming up against Mr. Gertz, he is going to say, "How do you know that these are the true and correct copies of these newspapers?"

The Court: Perhaps he will stipulate to it.

Mr. Boyle: If he will so stipulate, I have no need to bother the Sun-Times, no need whatsoever.

The Court: Well, you have got some papers; I am sure that you didn't manufacture the papers. So if you will tell him—

Mr. Boyle: I have—certain of them are papers and most of them are Xeroxed and I have everything that I need, but this is foundational proof. When I am up against him, I expect trouble.

The Court: The motion to quash the subpoena is granted; I mean, if you have everything that you need.

Do you have any objection if counsel will furnish you what he represents to be copies of newspapers, to agreeing that—

24 Mr. Gertz: Your Honor, I do have objections on the ground of relevancy and competency, but on the ground that they are copies, of course not.

The Court: All right. That solves the problem.

Mr. Gertz: I wouldn't take advantage of counsel or the Court by that kind of conduct.

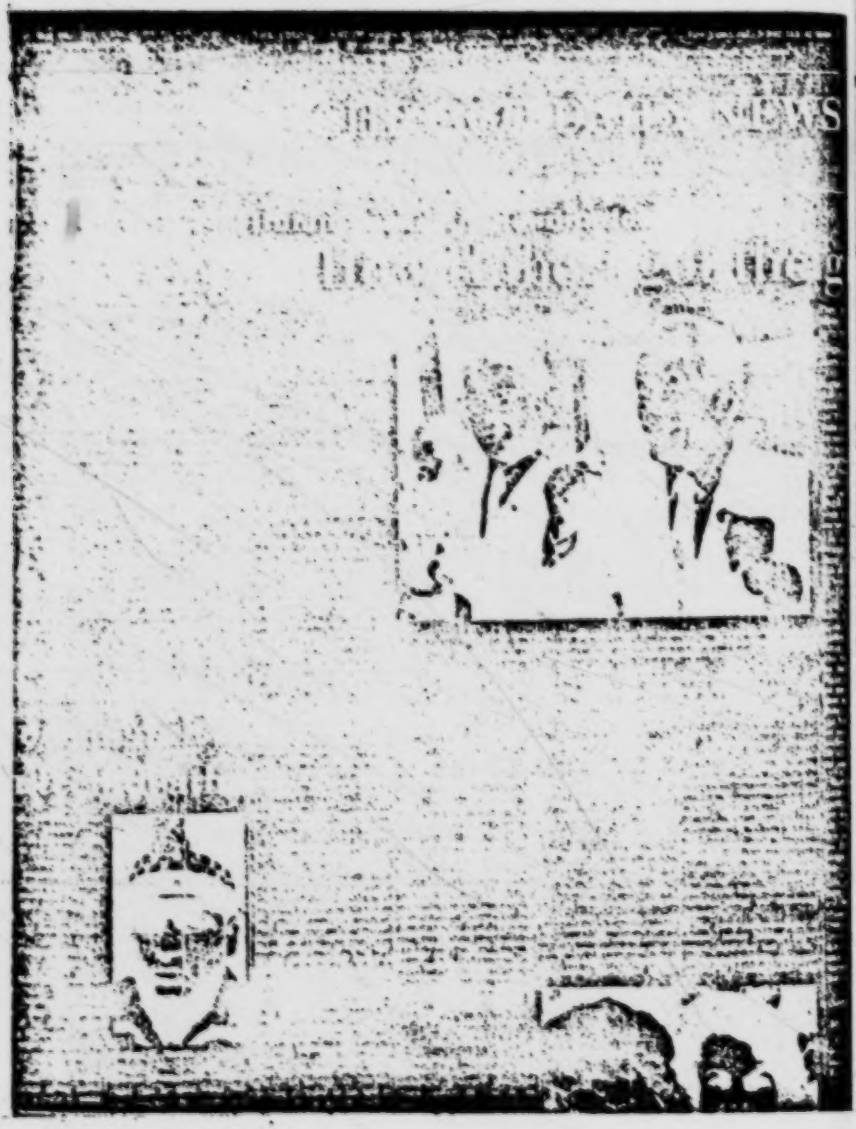
Mr. Boyle: All right. I would like to apologize to you, young man for having discommoded you.

The Court: Well, I think that the Sun-Times can probably recuperate from that.

• • •

DEFENDANT'S EXHIBITS

Exhibit D



CHICAGO DAILY NEWS

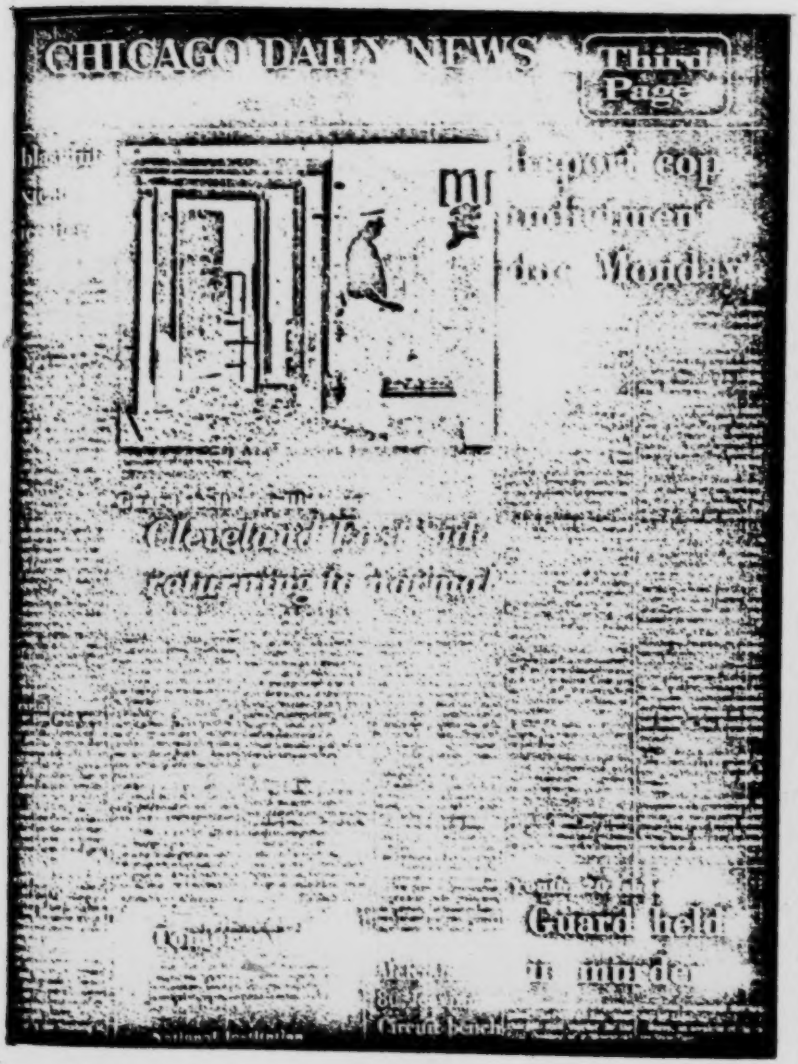
Final Market

Red Streak

All contraception barred

Pope bans birth pill

Controversy still


CHICAGO DAILY NEWS

Third Page

Report on ... Monday

Guard held

Policeman Nurses Gunshot Wound in Neck

Extremists Sought for Murder of U.S. Envoy

Romanians Demand
Russians And Allies
Leave Czechoslovakia

SAVE!
WIGS & FALLS

NATIONAL
DRUG STORES

30 Testimony of SCOTT STANLEY, called as an adverse witness:

• • •

Q. All right. So, speaking about the April 1969 issue of American Opinion, which really comes out in March, the manuscript would normally go to the printer, then, in about the third week in February? Is that correct?

A. Yes; late February.

Q. I show you a magazine which has been marked as Plaintiff's Exhibit 1 for identification and ask you if you have ever seen that before.

A. (Examining document.)

I certainly have.

Q. And is that a magazine which in fact—which is in fact published by Robert Welch, Incorporated?

A. I believe it to be. Yes, it is.

Q. And was that magazine published under your direction?

A. I edited this magazine.

Q. All right. Now, that means that you edited all portions of that magazine, is that correct?

A. Everything but the advertising.

Q. All right. Now, is there anything which appears in that magazine which you yourself wrote?

A. Yes.

Q. And—well, calling your attention specifically
31 to the inside cover, did you write the article, the material, which begins on there, "Dear Editor"? Excuse me—I mean, "Dear Reader".

A. Yes, I did write that material.

Q. You did write that material?

A. Yes.

Q. Now, did you write the lead-in to the story which appears on page 1?

A. By "lead-in" do you mean the title?

Q. Well, all right. Did you write the title for that article?

A. Yes, I did.

Q. All right. Now, there is a short introductory paragraph which—which I perhaps might just as well read, which states:

> "Alan Stang is a former business editor for Prentice-Hall, Inc., and a television writer, producer, and consultant. Mr. Stang is a frequent contributor to American Opinion and is author of the Western Islands best-sellers, It's Very Simple and The Actor. Alan Stang has just returned from an investigative trip to Chicago, where he conducted extensive research into the Richard Nuccio Case."

32 Did you write that material?

A. Yes, I did.

Q. Now—so it is your language which says that Mr. Stang ". . . conducted extensive research into the Richard Nuccio Case"?

A. That is my language.

Q. Now, do you have any first-hand knowledge of the research which Mr. Stang conducted into this Richard Nuccio case?

Mr. Boyle: Just a minute, if you please. Your Honor?

The Court: Yes?

Mr. Boyle: I think that counsel should establish at which time in history did he have first-hand knowledge of the research.

The Court: At the time that he—

Mr. Giampietro: At the time that he wrote that.

The Court: At the time that he wrote that—

Mr. Giampietro: At the time that he wrote that—

The Court: At the time that he wrote that, had he conducted any research?

33 Mr. Giampietro: Right.

Let me rephrase the question.

The Court: Not had he conducted any research, the question is simply, was he aware that Stang had conducted some research or investigation, had made some investigation at that time?

Mr. Giampietro: That is correct.

The Court: Were you aware of that?

The Witness: Yes, sir.

By Mr. Giampietro: Q. And—but did you have any first-hand knowledge of the research which Mr. Stang conducted?

A. Well, do you mean was I there when he did it?

Q. That's right.

A. No, I was not there when he did it.

Q. So your entire information as to what research was conducted by Mr. Stang came from Mr. Stang himself?

A. That is correct.

Q. All right. Now, you have also stated that the material which appears on the inside front cover of

34 this April 1969 issue of American Opinion was written by you, is that correct?

A. That is correct.

Q. Now, you stated in there, and I am quoting now:

"We do know that when American Opinion's Alan Stang goes after the facts on a story, he gets them, just as he has again in the very important article beginning on page 1."

Did you write that language?

A. I did.

Q. Now, you state in here that Mr. Stang has gotten the facts, gotten the facts in this article to which you refer.

Now, upon what did you base your statement that Mr. Stang had gotten the facts?

A. The considerable reputation of Mr. Stang.

Q. I see. Did Mr. Stang himself tell you that he had gotten the facts?

A. That's implied, an implied relationship between an author and an editor.

Q. I see. But he never really told you specifically that he had gotten the exact facts?

A. I am sure that he did.

Q. Do you recall when this was?

35 A. No doubt in the—in one of our telephone conversations during the period that he was in Chicago.

Q. I see.

You also stated in this, and again I quote:

"Mr. Stang reports this month on the framing for murder of an outstanding Chicago police officer—a man with no less than 26 formal citations for the excellence of his police work."

Did you have any actual knowledge of the 26 formal citations for the excellence of Officer Nuccio's police work?

A. Do you mean had I seen them?

Q. Yes.

A. No, I had not seen them.

Q. Had anyone else from the editorial staff of American Opinion magazine seen them?

A. Not all 26.

Q. All right. Again quoting from your article—or your statement—which says that:

"That this is a part of the Communist war on
36 our police is as certain as the innocence of the officer they have chosen as their symbolic target."

From where did you get this information that this was part of the Communist war on our police?

A. From Mr. Stang's article and from our previous commentaries and my general reading on the subject of the Communist attack on our police.

Q. I see. So your information regarding this specific incident came from the reading of this article?

A. It did.

Q. All right. Now, you again state, and again I am quoting:

"So important is this one, in fact, that reprints will be made immediately available."

Now, what was this importance to which you refer that made it imperative that reprints be made immediately available?

A. Mr. Stang states in his article that he thought that it was very important that it be distributed in order to cause a public awareness of the facts in the case of Officer Nuccio.

37 Q. All right. So, again, you got your information from the article itself?

A. That is correct.

Q. All right. Did you yourself make any attempts to verify any of the information appearing in this article other than speaking to Mr. Stang?

Mr. Boyle: At what time in history, your Honor?

By Mr. Giampietro: Q. At the time at which the article was printed.

The Court: I assume that this all relates to prior to the time the article was issued.

Mr. Boyle: Thank you, your Honor.

The Court: Without—

By the Witness: A. No; I relied upon Mr. Stang.

By Mr. Giampietro: Q. All right. Did anyone else from the staff of American Opinion magazine do anything to check on any of the facts which appeared in this article?

A. No one else edited the article, I alone saw it and handled it.

38 Q. I see. All right. Now, I think that you stated that you had no first-hand knowledge of what Mr. Stang did to obtain the facts which appeared in the article, is that correct?

A. No first-hand knowledge.

Q. The only thing that you knew about that is what Mr. Stang may have told you?

A. That is correct.

Q. Did Mr. Stang come to you with the idea for this article or did you come to him with the idea for this article?

A. I went to Mr. Stang with the proposal that he investigate the circumstances around the indictment of Officer Nuccio in Chicago.

Q. All right. Now, that was an article which—or a subject, I should say, which you felt bore some looking into?

A. I did.

Q. The idea was generated within the American Opinion magazine?

A. It was.

Q. And this was to fit the specific needs of the American Opinion magazine, is that correct?

A. Yes, that's correct.

Q. Now, at the time this article was received
39 by you in its manuscript form, did you know Mr. Elmer Gertz?

A. No.

Q. Had you ever heard of him before?

A. The only time—the only time I had heard of Mr. Gertz was when I—in one of my telephone conversations with Alan Stang.

Q. All right. So, again, at the time that this article was printed, the only knowledge you had of Mr. Gertz was from—

A. No; I had a little more knowledge.

Q. And where did you obtain that knowledge?

A. The nature of my telephone conversation with Mr. Stang, I had asked him to name anybody who was well enough known in Chicago that we could get a picture of him from one of the local newspapers and he said that he didn't know who but that—he gave us four, five or six names. I had my secretary call some of the newspapers. I think that she finally got a picture of Mr. Gertz from the Chicago Tribune.

Q. By the way, referring to the pictures in the magazine, who wrote the captions for these pictures?

A. I did.

40 Q. You did?

A. Yes.

Q. Now, on page 9 of the April 1969 issue of American Opinion, there appears a picture of the plaintiff in this case and it says: "Elmer Gertz of Red Guild harasses Nuccio."

Where did you get the information to write that caption?

A. All captions are written on the basis of information in the articles.

Q. I see. Now, by the way, what is the "Red Guild"?

A. It is a general reference to the National Lawyers Guild.

Q. I see. So the "Red" attached to the "Guild" is your language which you attached to this?

A. That is opinion.

Q. I see. Now, when you say "opinion" what do you mean by "opinion"?

What opinion does that show?

A. We advertised ourselves as a journal of opinion and it shows that it is our opinion that Mr. Gertz of the Red Guild had been harassing Officer Nuccio.

41 Q. My question is, what opinion are you expressing when you say the "Red Guild"?

A. That it is our opinion that the National Lawyers Guild is a Red organization.

Q. What do you mean by "Red"?

A. I mean that it is a radical organization and, more specifically, with regard to the National Lawyers Guild, that it has been cited by committees as a, as a—I believe in one instance it was called the "Foremost Legal Bulwark of the Communist Party."

Q. Well, that's one of the things that Mr. Stang says in the article, isn't that right?

A. Well, I also—I also knew of that.

Q. Well, I mean, you know, I don't want to harass you or anything but I just wish that you would answer my questions.

A. I want to do that.

Q. All right. And that's what Mr. Stang states in his article, this specific article that we are talking about, is that not right?

A. He states what?

Q. That the National Lawyers Guild is "one of the foremost bulwarks of Communism in the United States"?

42 A. He uses the precise language and quotes it there, yes.

Q. All right. Now, so when you say that Elmer Gertz ". . . of the Red Guild harasses Nuccio," you are saying that Mr. Gertz is connected with the National Lawyers Guild, which you say is a Communist organization, is that correct?

A. I believe that we say that it is a Communist front organization.

Q. All right. Do you in any way distinguish between a "Communist front" and a "Communist organization"?

A. It depends upon the degree to which the front is manipulated by the Communists.

Q. But you are intending to indicate that any connection with the National Lawyers Guild indicates a connection of Mr. Gertz with a Communist organization?

A. No, with a Red organization.

Q. Well, what is the difference between a "Red organization" and a "Communist organization"?

A. Well, "Red" is a—do you really—the history of "Red" of course goes back to—its choice as early as the French Revolution as the color of International Socialism and National Socialism.

43 It has been used historically as an indicator of radical Socialist activity and it is still so used.

Q. Now, you also say in your caption underneath the picture of Mr. Gertz that he had been harassing Mr. Nuccio; what did you mean by that?

A. I meant to indicate what Stang says in his article.

Q. And Mr. Stang says in his article that Mr. Gertz had filed three lawsuits on behalf of the Nelson family against Mr. Nuccio?

A. That's correct, yes, he does say that.

Q. So when you say that Mr. Gertz is harassing Mr. Nuccio, you are saying that he has filed suits on behalf of clients against him?

A. Yes, that's correct.

Q. All right. Thank you.

Do you have any knowledge that—

Mr. Giampietro: Well, strike that.

By Mr. Giampietro: Q. What is the "Marxist League For Industrial Democracy"?

A. That is one of a long series of Fabian Socialist
44 organizations which has been active in this country for many years.

Q. Now, is the name of that, the "Marxist League For Industrial Democracy" or is "Marxist" something which Mr. Stang has attached to the name of that organization?

A. "Marxist" is a proper adjective in this case but it is not a part of the formal name of the League For Industrial Democracy.

Q. Did you know at the time that this article was printed whether or not Mr. Gertz had been an official, or, indeed, even a member of the League For Industrial Democracy?

A. I relied upon Mr. Stang.

Q. All right. So you yourself—

The Court: I understand that he said in connection with all of the—with the entire contents of the article, that he relied on Mr. Stang, so you don't have to ask him about specific items.

Mr. Giampietro: That's right.

The Court: That's right, isn't it?

The Witness: That is correct.

Mr. Giampietro: All right.

45 By Mr. Giampietro: Q. Now, Robert Welch, Incorporated, is named after Mr. Robert Welch who is the founder of the John Birch Society, is that correct?

A. That is correct.

Q. And American Opinion magazine is the magazine which espouses the doctrines and viewpoints of the John Birch Society, is that correct?

A. We are very close.

Q. All right. Now, what process does each article undergo before it is actually printed in the magazine?

A. Well, it is conceived, there is a discussion with the author, the author agrees to do the article and commences his—begins his research.

Q. Now, after you receive the manuscript from the author, what then must be done with the manuscript?

A. Well, it depends a great deal upon who the author is.

• • •

48 Q. When did the American Opinion for the April 1969 issue—when would it be distributed? When was it sent out?

A. It was mailed—they began mailing it from the plant of our printer in Lowell, Massachusetts, on the third day of March of that year.

Q. And when did you receive the manuscript for the article which we have been discussing, "Frame-up"?

A. The 18th day of February.

Q. And when was that manuscript sent to the printer?

A. Oh, within 24 hours, I imagine.

We worked straight through on it.

Q. Okay. Now, why was it that this article was received so close to the time of the publication of the magazine?

A. Well, it was received so close because the Nuccio—we probably—Stang had come to Chicago, gone to work on the piece; he had just finished it and we —we considered this a very important case and we wanted to get it in as soon as possible.

Q. So I think that it is fair to say that—

(Brief interruption.)

49 By Mr. Giampietro: Q. I think that it is safe to say, then, that the magazine—or that this article was in your hands for a considerably shorter period of time than is normal in the conduction of your business?

A. It was only in my hands—it was only actually in my hands for about four hours.

Q. I see. All right. By the way, when did you destroy the manuscript?

A. I didn't—

Q. When did you destroy the manuscript for this article?

A. I didn't destroy—those—our manuscripts and galleys and page proofs are disposed of by a secretary or somebody who carries out things after we get an issue to bed and printed.

We are after finished-type, published material and we don't save wastepaper.

Q. All right. So this was destroyed by someone on your staff immediately after the magazine itself was printed, is that correct?

A. Well, I imagine that it was carried down by the cleaning man, who is not, really, on my staff.

Q. But it was given—

50 A. Right.

Q. Given to him to so destroy by someone—

A. Right. It was put out and he carried it away, right.

Q. All right. By the way, referring again to the language which appears on the inside front cover of the April 1969 issue of the American Opinion, issue of American Opinion, when did you write that language?

A. I wrote it very tightly against the deadline. That's the last thing that can be done in any issue.

Q. Was it written before or after you received the manuscript of "Frame-up"?

A. It was written after. naturally.

Q. How about the lead-in paragraph on the magazine on the article itself? When was that written? Was it written before or after you had received the manuscript of the article?

A. I don't—I don't remember whether it was written before or after. It was very close to the time; whether it may have been shortly before or shortly after I received it—

Q. Have you ever heard of American Opinion Bookstores?

A. Yes, I have heard of them.

51 Q. And would you tell me what an American Opinion Bookstore is?

A. An American Opinion Bookstore is a bookstore with a kind of a reading room that sells books. It is a bookstore for the sale of conservative and patriotic literature; American flags, eagles, books or magazines that we publish and some from the leading publishers in America and the world.

Q. Is there any connection between American Opinion magazine and the American Opinion Bookstores?

A. We are both children of the same corporate father.

Q. I see. And the American Opinion magazine is sold in and through the American Opinion Bookstores, at least in part?

A. In—they sell our magazines.

Q. Now, how many American Opinion Bookstores are there, do you know?

A. I don't know the exact number. I have heard from other—I have heard from members of the staff

an approximate figure, which I could give you. It would be close, I think.

Q. All right. What is that approximate figure?

A. Somewhere around 275 or 280.

52 Q. And where are those bookstores located, if you know?

A. Well—

The Court: All over the country?

The Witness: All over the country.

The Court: Some in Illinois?

The Witness: Yes, sir.

By Mr. Giampietro: Q. And each one of these bookstores would sell copies of the American Opinion magazine, is that correct?

A. To my knowledge, they all do. I hope that they do.

Q. Now, how is the American Opinion magazine distributed? Is that distributed solely on over-the-counter sales or do you also have a subscription list?

A. Oh, yes, it has a subscription list.

Q. And it is sold over-the-counter as well?

A. That is correct.

Q. How many people are on your subscription list?

Or, how many are—

Mr. Giampietro: Strike that.

53 By Mr. Giampietro: Q. How many were on your subscription list at the time that the April 1969 issue was sent out?

A. I don't know the exact number; I can tell you what a print run is and I can tell you approximately what it is.

Q. And will you tell us that.

A. Yes. The print run on that particular issue was forty-four thousand, something, and we don't normally print more than two thousand extra copies, so I imagine that it was about 42,000 circulated through our subscription list.

Now, our subscription list is not a normal—it is not run in the normal manner. Now, we have about half of that—about half of that, about half of that forty-some-odd thousand is people who send in their money, like you do for a normal magazine. The other half is from our friends that we call "standing order agents"; people around the country who think that our magazine ought to be on newsstands, and so they subscribe to buy five copies or four copies a month and they contract with us to do that, and we send them to them and then they take them to their local grocery store or to the drug store, or
54 wherever magazines might be sold, and place them with the individual entrepreneur. That's the other half of our—it is about half and half, with probably —it really isn't that any more, it is probably about, oh, it is probably about 24,000 to 18,000 in favor of those who send in their dollars for the regular subscription.

Q. By the way, do you receive any returns of any of these magazines?

A. No, we do not.

Q. And they remain on the newsstands indefinitely?

A. Well, I hope—I hope that they don't.

Q. Again calling your attention to this April 1969 issue of American Opinion magazine, on page 18 there

is a statement at the end of the article "Frame-up" which says:

> "Because of the importance of the preceding article to the national Support Your Police Committees, and because time in this case is so terrifically short, additional copies of this important article are immediately available in any quantity . . ."

Now, did you write that language?

A. I did.

Q. Were reprints in fact made of this article?

55 A. They were.

Q. I show you a document which has been marked Plaintiff's Exhibit 2 for identification and ask you if this is one of the reprints which was made of this article?

A. (Examining document.)

Yes, it is.

Q. And that was printed and published by Robert Welch, Incorporated, is that correct?

A. It was published by us; it was printed by our printer at Lowell, Massachusetts.

Q. It was printed at your direction?

A. That is correct.

Q. And can you tell me how many copies of this reprint were printed?

A. Yes; there were 6,000; I mean, excuse me, there were 86,000.

Q. Do you know what happened to those 86,000 reprints?

A. Not every one. I know that 74,000 of them were sold outside of the State of Illinois; that about —under 5,000 were sold in the State of Illinois.

Q. Do you know to whom these reprints were sold in the State of Illinois?

56 A. It would be very hard to—no, I don't know. I know of—there was one large order of 3,300, which was a large order for us, from the Elmhurst American Opinion—the American Opinion Bookstore, Elmhurst, Illinois.

Q. And that bookstore is, as you have said before, a sister affiliate of yours with the John Birch Society, is that correct?

A. It is.

Q. Do you know if any reprints of this article are still being distributed?

A. I know that we are not distributing them.

Q. Can you tell me when the last time was that you sold any of these reprints?

A. I can't tell you exactly. I know that it was—we stopped it on advice of counsel; said that it wasn't good to continue distributing it until this matter is cleared up, and that was some time this spring.

Q. I see. So until the spring of 1970 you were still sending out reprints of this article?

A. We were still providing them to—to our bookstores and people who ordered them, yes, we were.

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145 ELMER GERTZ, called as a witness in his own behalf, having been previously duly sworn, was examined and testified further as follows:

Cross Examination (Resumed).

The Court: Good morning, ladies and gentlemen. We didn't keep you back there purposely, we had a

lot of customers to take care of. We are ready now to start.

Mr. Boyle: May it please the Court—

The Court: You may proceed.

Mr. Boyle: Thank you.

By Mr. Boyle: Q. Mr. Gertz, were you ever a lecturer at a school known as the Abraham Lincoln School?

A. I don't have any recollection of such. I lectured many places.

Q. Mr. Gertz, during your lifetime, have you written books?

A. Yes; over the last 40 years I have written three books.

Q. All right. And during your lifetime, have you written articles for newspapers?

146 A. Yes, a number of articles.

Q. Will you please elaborate on that; tell us how much and in what papers and over what period of time.

A. Well, I—

Mr. Giampietro: Your Honor, at this time I am going to object to that question. I think that, first of all, it is too general and it goes too far afield.

Secondly, I do not feel that it is relevant to this proceeding.

The Court: Overruled. It is general, I will admit that, but perhaps that's the fastest way to get the information.

By The Witness: A. Would you repeat the question, please.

The Reporter: ". . . would you elaborate."

By The Witness: A. Oh, I have written reviews of books for several nwspapers, the Chicago Sun Times, and, before that, the Chicago Sun, and the Chicago Daily News occasionally, and, when I was a kid, for the Chicago Evening Post.

147 I have also occasionally written reviews for other magazines and publications.

By Mr. Boyle: Q. Did you write anything for the Chicago Defender?

A. Yes, while I was in college over 40 years ago I wrote poetry for the Chicago Defender and sometimes articles.

Q. Did you write anything for the Chicago Courier?

A. I wrote, over a short period of time, a series of articles, simplifying legal problems, such as wills, such as the rights of Defendants, and a few things like that.

Q. Did you write anything for the Chicago Jewish Forum?

A. Yes.

Q. Would you tell us what that was?

A. The Chicago Jewish Forum was a publication published and edited by a friend of mine. It had articles of general interest to Jews and minority groups and it had stories and poems and art and occasionally during the period of its publication I wrote articles or book reviews for it.

148 Q. With respect to your writing newspaper articles or reviews, do you do so currently?

A. Yes. Now and then I write reviews for the Chicago Sun Times.

Q. Mr. Gertz, with respect to your radio appearances, have you ever made any radio appearances?

A. Oh, yes.

Q. And once again, may I ask a general question and ask you to give us a summary of your life experience in that regard, as you can recall it.

Mr. Giampietro: Your Honor—

The Court: I understand that you are objecting to this entire line of questioning.

Mr. Giampietro: That is right. I just wanted the record to show.

The Court: Yes.

Mr. Giampietro: To show a continuing objection.

The Court: Yes.

By The Witness: A. All right. I have been interviewed in connection with some cases that I have
149 been involved in and I have appeared on radio and television programs throughout my professional career.

By Mr. Boyle: Q. Have you appeared—how many different radio stations have you appeared on in Chicago, sir, during your lifetime?

A. At one time or another, I suppose practically all of them.

Q. And have you appeared on radio and television programs in cities other than Chicago?

A. Yes, now and then.

Q. What cities, sir?

A. When I was the attorney in a case in Dallas, Texas, I was interviewed in connection with that case, and in Cleveland when I was there in a case I was interviewed with respect to it and several other cities. Most of my appearances have been in Chicago.

Q. All right. Yes, sir. Have you ever appeared on panel shows in Chicago, on television or on radio?

A. Several times, yes.

Q. Within the last few years, have you appeared
150 on panel shows in Chicago?

A. Yes. I remember appearing on panel shows—a panel show with respect to capitol punishment.

Q. Were there any others? Just one in the last several years?

A. No, no; there were several others.

I have appeared on panel shows with respect to First Amendment rights with respect to publication.

Q. Did you ever appear on the Kup Show?

A. Some years ago.

Q. All right. Well, during the time that you appeared on panel shows and made your various radio addresses, what was the scope of the subject matter covered by you, in a general way? Can you tell us that?

A. When I was on At Random—that's the C.B.S. show, it is a conversation show; you can never anticipate what the subject matter will be. Almost anything under the sun.

Q. Mr. Gertz, what I am trying to get at is that, your presentations over the media of radio or television communications has certainly not been confined to purely legal subjects, has it?

151 A. I would say most of my appearances have been interviews in connection with cases in which I have been the attorney on one side or the other. But sometimes, other matters.

Q. But you have spoken—have you spoken on political issues, sir?

A. Political, for candidates, no.

Q. Not for candidates, I mean political philosophies, socio-phenomena of, say, Communism?

A. No. I don't recall ever appearing on a show devoted entirely to that.

I have been on shows in which public issues were discussed and the subject of Communism would come up and other subjects would come up which were peripheral to it, but these were all informal, unrehearsed shows where you could never tell what would come up.

Q. How many times in all do you estimate that you were interviewed, either on radio or television, during the year 1969?

A. During the year 1969, that was one of the leaner years; not too many times during that year.

Q. Well, by—what do you mean by "not too
152 many times"?

A. Relatively few times, up until the tail end of the year, but that was a year in which I did not appear very often on radio or television.

Q. But you did appear?

A. A few times, yes.

Q. Yes. Mr. Gertz, I will change to another subject, and that is, would other people—have other people written articles about you in your lifetime that appeared in the Chicago papers?

A. Yes. I was involved in some cases that you might call well known, or even notorious cases, and in connection with them there were, sometimes, newspaper articles.

Q. Mr. Gertz, I hand you herewith Defendant's Group Exhibit C for identification, 1 through 43, and ask if you can tell us generally what that is.

A. (Examining documents.)

Mr. Giampietro: Your Honor, I will have to object to this.

The Court: This is your continuing objection.

Mr. Giampietro: No, I am objecting to the form
153 at this time, your Honor. The question—he is handing him a great sheath of documents and asking the witness what they are.

The Court: You represent to him that it consists of what?

Mr. Boyle: I represent that it consists of articles from the Chicago papers concerning Mr. Gertz over a period of a lifetime.

By The Witness: A. From what I could judge by glancing at these, these are articles that have appeared from 1942 to more recent date, dealing sometimes with me alone and sometimes with me in connection with other subject matters. Some of them are very short articles, some a little longer, on various subjects. Mostly, I would say, cases that I have been involved in or activities that I have been involved in.

By Mr. Boyle: Q. May I have the exhibits, sir?

A. Surely.

Mr. Boyle: I have no further questions.

The Court: No further questions?

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171 MICHAEL M. KACHIGIAN, called as a witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Giampietro.

Q. Will you state your name and address, please?

A. Michael M. Kachigian, 1901 North Sayre.

Q. Please speak up so that all of the Jurors can hear you.

A. Yes. Chicago, Illinois.

Q. What is your business or profession?

A. I am an attorney.

Q. How long have you been engaged in that profession?

A. I have been practicing approximately 15 years.

Q. And would you give us some kind of a general idea of what kind of practice you are engaged in?

A. Yes. I deal with criminal matters. I am in general practice. I represent quite a few corporations, and things of that nature.

172 Q. Now, do you know Mr. Elmer Gertz?

A. Yes, I do.

Q. How long have you known Mr. Gertz?

A. I have known Mr. Gertz personally for about a year and a half; a year—I would say about a year, a little over a year.

Q. All right. And have you had occasion to meet him professionally?

A. Yes, I have.

Q. Now, during this time, you have known him and prior to the time that you have known him personally, have you had occasion to discuss Mr.

Gertz or heard him discussed with other members of the legal profession?

A. Yes, I have.

Q. As a result of those discussions, are you acquainted with his reputation in the community of Chicago prior and on April, 1969, for truth and veracity, honesty and integrity, being a good and loyal citizen for the United States and as an attorney?

A. Yes.

Q. Now, what is his reputation for truth and veracity?

173 A. Excellent, to my own knowledge.

Q. What is his reputation for honesty and integrity?

A. Very good.

Q. What is his reputation as a good and loyal citizen of the United States?

A. Excellent.

Q. And what is his reputation as an attorney?

A. Very good.

Q. During the time in which you have known Mr. Gertz, have you ever known him to espouse the violent overthrow of the United States Government?

A. No, I have not.

Q. Have you ever known him to have been a member of the Communist Party?

A. No, I have not.

Q. Or a member of any Communist organization?

A. None to my knowledge.

Q. Have you ever heard him espouse the Communist doctrine in any way?

A. None; no.

Q. Mr. Kachigian, are you familiar or do you know a man by the name of Richard Nuccio?

A. Yes, I do.

174 Q. And in what capacity do you know Mr. Nuccio?

A. As his attorney and as his family attorney.

Q. How long have you known—how long have you been Mr. Nuccio's attorney?

A. Approximately three and a half years.

Q. And how did your association with him come about?

A. I had known his family for quote some time but I particularly represented his interest when he became involved in a shooting as a police officer while on duty and he was indicted by the State's Attorney's office.

Q. And he was accused of having shot a boy by the name of Ronald Nelson, is that correct?

A. That is correct.

Q. And did you participate in the defense of Mr. Nuccio in that criminal trial?

A. I did, as co-counsel with Mr. Echeles.

Q. And you are still a representative of Mr. Nuccio, is that correct?

A. Yes; in fact, I think that we are going to trial next month.

175 Q. Now, did you—

Mr. Boyle: I beg your pardon, I didn't hear—

The Court: Julius Lucius Echeles?

The Witness: Julius Lucius Echeles, yes, your Honor.

Mr. Boyle: May I have the answer to that last question read.

The Witness: Yes; I believe that it goes to trial next month.

The Court: He says that it goes to trial next month.

Mr. Giampietro: That it goes to trial next month.

Mr. Boyle: The Nuccio case will be retried?

The Witness: Yes.

By Mr. Giampietro: Q. Now, in connection with the Nuccio case, did you ever hear of Mr. Gertz being involved in that case in any manner?

A. None to my knowledge.

Q. To your knowledge, was he involved in the prosecution of Mr. Nuccio in any manner?

176 A. None to my knowledge, no.

Q. Wre you aware that he had filed a civil suit against Mr. Nuccio?

A. No, I was not.

The Court: When did you become aware of that? Aren't you aware of it now?

The Witness: I don't believe that I am aware of it now.

By Mr. Giampietro: Q. Mr. Kachigian, did you ever see Mr. Gertz at the trial of Mr. Nuccio, the criminal trial which was held?

A. I don't believe so.

Q. Were you aware of any conspiracy or any plot to harrass or to frame Mr. Nuccio?

A. None has ever been called to my attention, no.

Q. All right. Now, were you aware or did you ever hear of any Communist conspiracy to harrass or to frame Mr. Nuccio for this alleged crime?

A. No, none to my knowledge.

Q. So, as far as you know, Mr. Gertz was never
177 involved in any way in any prosecution or harrassment of Mr. Nuccio, is that correct?

A. Not that I know of, no.

Q. Mr. Kachigian, did you ever hear of a man named Alan Stang?

A. I don't believe so.

Q. Did Mr. Stang ever contact you in connection with the Nuccio case?

A. Not to my knowledge.

Q. And you never talked to him, as far as you know?

A. No.

Q. You never gave him any information of any kind?

A. None; absolutely none.

Mr. Giampietro: Thank you, no further questions.

The Court: Cross examiner.

Cross Examination by Mr. Boyle.

Q. I'm sorry, I didn't hear your name?

A. Kachigian, Michael M. Kachigian.

The Court: Do you want to spell the last name for his benefit?

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184 WINFIELD SCOTT STANLEY, JR., called as a witness by the Defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination by Mr. Boyle.

Q. Mr. Stanley, was Mr. Stang, the author of the article, ever an employee of Robert Welch, Inc.?

A. No, he was not.

Q. Is he now an employee of Robert Welch, Inc.?

A. No, he is not, he is a freelance.

Q. Now, Mr. Stanley, when you decided to send Mr. Stang, or ask him to go to Chicago, what was the story that you sent him to get, to inquire about?

A. Well, the story—

Mr. Giampietro: Excuse me, your Honor. I didn't hear that question.

185 Mr. Boyle: I asked him what story was he sending him after, what prospective story did he have in mind when he sent him.

The Court: When Mr. Stang was sent to Chicago. What was his assignment?

I think that it was covered yesterday, but, very briefly, what was it?

The Witness: I wanted to know whether, in the opinion of Mr. Stang, the Nuccio murder trial and the publicity around it were part of a continuing Communist effort to blacken the reputation of America's police officers.

By Mr. Boyle: Q. Now, had your paper in the past ever used that as a theme in any way, this Communist conspiracy to harrass police?

Mr. Giampietro: I object to that, your Honor.

The Court: Well, he may answer yes or no, without going into any great detail.

Had that been a theme that you had used before?

186 The Witness: Since 1960.

By Mr. Boyle: Q. All right. And did your magazine, together with the John Birch Society, react to that in any specific way, that theme? Did they do anything?

Mr. Giampietro: Your Honor, I object to that, too.

The Court: Well, he may state generally.

What did you do about it, I mean, did you write articles about it?

The Witness: We wrote articles and maintained a national Support your Local Police campaign, with committees in nearly every City in the United States, trying to urge all Americans to support their local police and keep them independent of Federal control and manipulation.

Mr. Giampietro: Your Honor, I must object to that and ask that that be stricken. That's not an answer, it's a speech.

The Court: Well, objection overruled.

187 By Mr. Boyle: Q. Now, on the years preceding the incident where you sent Mr. Stang out to Chicago, in those years, do you know whether or not any other publications also dealt with that same theme, dwelled on that same theme of a Communist conspiracy to harrass the police?

Mr. Giampietro: Your Honor, again I object. This man—

The Court: Generally he may state the context in which this assignment was given to this particular reporter and this is all that he is doing. I mean, I am not permitting him to go into any detail, I am simply permitting him to state that this was at that time, at least, in their opinion, a public issue. That's all that is being said here.

By The Witness: A. Literally thousands of newspapers across the country were discussing this matter and it was a major national issue, in my opinion.

By Mr. Boyle: Q. Do you know whether that
188 issue was discussed in the years preceding the incident that we are talking about in any Governmental Agency and published?

Mr. Giampietro: Your Honor, again I will object. This is not a proper question for him to ask as to whether—as to what he knew as to several unspecified documents from some Governmental Agency.

The Court: Well, we are not going to go into the contents of the documents.

Mr. Boyle: Not at all.

The Court: But simply as to his general knowledge as to what other people may have been writing about on the same subject and whether they were writing about the same subject. This is all that I assume that he is doing.

Mr. Boyle: That's all I am doing, Judge.

The Court: And I am not going to permit him to go into the contents of any of this.

Mr. Giampietro: Your Honor, may I show a con-
189 tinuing objection to this line of questioning?

The Court: Yes, of course. Of course you may.

Mr. Giampietro: Thank you.

The Witness: Now, may I answer that question?

The Court: Yes.

By The Witness: A. F.B.I. Director J. Edgar Hoover was writing about it, the Senate Internal Security Subcommittee was having hearings on it, Law and Order Magazine was writing about it. It was discussed at some length and regularly on the floor of the House of Representatives and in the United States Senate.

By Mr. Boyle: Q. Thank you.

Mr. Stanley, I show you Defendant's Group Exhibit E-1 through '9 for identification, and ask you to look at them, please.

Mr. Giampietro: May I see those after you—

The Court: Do you have copies for counsel so that he can look at them?

190 Mr. Boyle: No.

The Court: Well, I assume that your witness has seen these before.

Mr. Boyle: Yes.

The Court: Now, what is your question?

By Mr. Boyle: Q. My question is, whether this group of exhibits that I gave you reflect the publication of this issue as you have just testified to?

Mr. Giampietro: I object to that, your Honor. There has been no proper foundation for this question at this point.

Mr. Boyle: Judge, he testified that there were such publications and I asked if they were the ones.

Mr. Giampietro: First of all, we don't know where he got them or where they came from, and I haven't even seen them yet.

The Court: You may take a look at them.

Are you asking leave to admit these in evidence?

191 Mr. Boyle: No, no, Judge.

I will withdraw the question.

The Court: All right. Withdraw the question.

Mr. Boyle: All right.

By Mr. Boyle: Q. Will you take each of these exhibits, if you please, sir, identify them for us, tell us when and where you got them, and identify them by number.

Tell us what they are, when you got them.

A. This first one is—

Q. Without going into the contents, just tell us—

A. Yes. This is an article from Reader's Digest, '65, or later than '65, probably '66; it is a part of our, it was a part of our general file on harrassment of police.

Q. All right. Proceed to the next one. Identify it by number.

A. Yes. This is No. E-5 and it is a clipping from the Deserate News; that's a newspaper in Salt Lake City. It is a daily there. November 23, 1961.

Q. When did you see it first?

192 A. Oh, I imagine that I saw it sometime probably when it first came in and had it filed.

Q. Where did you see it?

A. In our files. Similar—

The Court: Were these documents taken from your files?

The Witness: They were taken from our file, yes, sir; some of them were, some of them were obtained—

By Mr. Boyle: Q. Proceed to the next one. Identify it, please, by number.

A. This is No. E-4, a clipping from the Pittsburgh Press of Sunday, March 20, 1966. It is a U.P.I. report out of Washington. I deals with—oh, you don't want that?

Q. No, sir, I do not.

The next document; identify it, tell us when you saw it, please?

A. This is a document, the Congressional Record, April 19, 1967.

Q. May I call your attention, please, to the Appendix, Page 1094—excuse me; Page 1904.

Is that what you are talking about?

193 A. Yes, that is—

Mr. Giampietro: Your Honor, I object. There is no question pending at this time.

The Court: Well, what is that—what is that Appendix, is that your question?

Mr. Boyle: My question—I have asked him to identify this and when he saw it.

The Court: Well, ask the question.

By Mr. Boyle: Q. When did you see it, sir?

A. Probably within three days after it came out.

Q. What date would that have been?

A. It is dated April 19, 1967.

Q. All right. Proceed to the next one. Tell us the nature of the document, when you saw it.

A. This document is an annual report of the Committee on Unamerican Activities of the House of Representatives of the United States.

Q. Where did you get it? Where did you see it?

A. It is dated 1968; I probably saw it in, oh,

194 within, within a month of the time that it was out.

Q. Where did you see it?

A. We—we have on order—we have orders in for all such documents from the House and Senate Committees.

Q. In your office in Belmont?

A. In my office in Belmont, yes.

Q. And it was in that same file, is that correct?

A. It was in our general files.

Q. Thank you, sir. The next one, by Exhibit No., please.

A. This is Exhibit E-8. This is a hearing called the "Communist Plot Against the Free World Police" before the Subcommittee to investigate the Administration of internal security—of the Internal Security Act and the internal security laws before the Judiciary Committee of the United States Senate.

Q. When did you first see that?

A. Shortly after—shortly after it came out, sometime in, oh, sometime in late 1961.

Q. And where did you see it?

A. In my offices in Belmont.

195 Q. Thank you, sir.

Are there anymore?

A. Yes, there is E-9 and this is a Congressional Record for September 24, 1965, and it contains a report by the Director of the Federal Bureau of Investigation, J. Edgar Hoover, from U. S. News and World Report of September 27, 1965.

Q. In the same general area, the same general issue, Communist conspiracy to harrass the police?

A. Yes, sir, that is correct. It is—

Q. That's all, sir.

A. All right.

Mr. Boyle: At this time, your Honor, I will offer these into evidence on the issue of whether there was a public issue dealing with a Communist conspiracy to harrass the police at the time of the publication of this article.

The Court: We will discuss this matter out of the presence of the Jury sometime later where counsel may make his objections.

Mr. Boyle: Of course. Would you like to look at them now?

196 The Court: He may look at them. Probably he can take care of that during the noon hour.

Mr. Giampietro: Thank you.

The Court: They are admitted, not on the contents but simply on the basis that these were documents in the possession of—I understand that your offer is that—

Mr. Boyle: What's that, sir?

The Court: Your offer is that these were documents in the possession or that had come to the attention of the witness prior to the publication of the alleged libel in this case, is this what you are stating?

Mr. Boyle: Exactly; on the issue of whether there was a public issue at this time of this conspiracy.

The Court: They are not directed against the Defendant in any way—

Mr. Boyle: Not at all, sir.

The Court: Simply showing what facts had come

197 to the attention of this witness prior to the publication of the alleged libel.

I am simply finding out for you what the offer consists of, and so—

Mr. Giampietro: I understand that, your Honor.

The Court: All right.

Mr. Giampietro: You misspoke, I believe, your Honor. You said "not directed toward the Defendant," and I think that you mean not directed toward the Plaintiff.

The Court: Oh, I certainly did misspeak myself.

Mr. Boyle: I am trying to determine the existence of a public issue and the state of his mind before publication.

The Court: Yes. All right. I understand what the purpose is. So, all right.

Mr. Boyle: All right, sir.

198 (Whereupon, the documents previously marked for identification as Defendant's Exhibits E-1 through E-9, both inclusive, were thereupon received in evidence.)

By Mr. Boyle: Q. Mr. Stanley, I believe that in your earlier testimony you stated that when you got the summons in this case you thereafter tried to ascertain the facts with more particularity and you talked with Mr. Stang about it, is that right?

A. That is correct.

Q. Did you do anything else to attempt to ascertain the truth or falsity of that article?

A. I did.

Mr. Giampietro: Your Honor, I object at this time to anything that was done after the publication of the article. It is entirely irrelevant to these proceedings.

The Court: Well, I don't understand the purpose of the question.

Mr. Boyle: Well, your Honor, this—

199 The Court: As to what he may have done after the libel was published.

Mr. Boyle: Right. This is done in order to find out from this witness whether he was able to establish the truth of certain portions of the article.

The Court: Well, you may ask him as to what he did in that connection but as to specific matters

that he can testify to as from his personal—he can testify as to his personal knowledge, but—

Mr. Boyle: That's what I am doing.

The Court: Well, all right.

By Mr. Boyle: Q. All right, sir. Did you do anything at all other than to talk to Mr. Stang to ascertain of your personal knowledge whether the allegations in this article relating to this Defendant were true or false?

A. I went immediately—I did.

The Court: Relating to this—

Mr. Boyle: Right, sir.

The Court: You are getting into my trouble.

200 By the Witness: A. I did.

By Mr. Boyle: Q. What did you do?

The Court: If you two gentlemen would reverse yourselves at the counsel table, I wouldn't have this problem.

Mr. Giampietro: Your Honor, I would object to this until he tells us the specific time that he is talking about.

The Court: Well, perhaps that's his next question.

When did you do it?

By Mr. Boyle: Q. What did you do? Where did you do it? At what time?

Please explain it. What did you do?

A. As soon as I—

Q. Where did you do it and at what time?

A. As soon as I became aware—

Q. When was that?

A. Oh, I believe it was sometime in June of last year.

Q. All right.

201 A. I went—I went immediately to the Government documents, to our documents from the House Committee on Unamerican Activities and the Senate Internal Security Subcommittee, to determine whether or not—to confirm in my own mind that what Mr. Stang had said was absolutely accurate.

Q. Well, where were these documents at that time?

Mr. Giampietro: Your Honor, I object—

The Court: Wait a minute.

Mr. Giampietro: I object to this. First of all, it doesn't show that he has any first-hand knowledge of anything. He is referring to something else.

Secondly, again, I would submit that it is irrelevant to this proceeding.

The Court: When Mr. Gertz finishes, I will rule on the matter.

(Brief interruption.)

The Court: Unless you are prepared to offer into evidence—I mean, something more than just the
202 uncorroborated testimony of the witness as to what he may have done or what he may have found in some document, I am going to sustain the objections. There is no question about that.

Mr. Boyle: I would like to make an offer of proof.

The Court: You may make your offier of proof some time later.

Mr. Boyle: Thank you, your Honor.

Mr. Giampietro: Your Honor, may I move that the previous testimony on this subject be stricken?

The Court: Well, he really hasn't gone into—he really hasn't said anything yet except that he went

to certain—that last question may be stricken, if that's what you would like to have me strike.

Mr. Giampietro: That is correct, your Honor.

The Court: All right.

Mr. Boyle: All right, your Honor. Then that's the end of my direct examination.

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41 Colloquy re Jury Instructions: • • •.

The Court: Maybe a short stipulation as to the fact that there was at least a discussion, a publication, I mean, a public discussion at the time in question of the issue as to whether or not there was a Communist conspiracy directed against the police.

Mr. Gertz: The John Birchers did, but not the Congressional—

Mr. Boyle: Oh, now, please, this is the kind of subjectivity that I would like to be protected against for the balance of this trial, Mr. Gertz.

The Court: All right, all right.

Mr. Giampietro: Your Honor, may I ask one question? There are a couple of things that I am not clear on, at least as to your holding.

There were two ways in which this public issue area may come into being. One is under the general old rules of libel that have developed about fair comment on public issues, that's one thing, and it is the regular general rules of libel.

42 The second thing is the New York Times Rule, and the following rules.

The Court: Well, it also has something to do with the whole question of malice, doesn't it?

Mr. Giampietro: Well, here is—that's exactly my point, though.

As I understand the New York Times and the following cases, they deal with public figures; people who are in the public eye. Under those rules—and I think that this is shown by the cases which I cited in my trial memo—in order to come within New York Times, you must speak of a person as a public figure and your comments must be directed to him in that capacity, as a public figure, on that, on any particular issue in which he may have injected himself.

As I read New York Times and the following cases—

The Court: Well, you are arguing now the question as to "public figure".

Mr. Giampietro: Well, no, I am trying to make a differentiation, your Honor, as to the kinds of rules
43 of law that are going to be applied to this, because, under the New York Times, the definition of "malice" is very, very strictly confined.

Under the general rules of libel regarding public issues, it is much, much easier to prove malice and many other things are admissible to show malice on their part, so I am trying to find out—

The Court: Well, you are trying to find out what I am going to rule on the question of "public figure" ——and if you are trying to do that, why—

Mr. Giampietro: Well, yes. Right.

Mr. Boyle: Yes.

The Court: Well, if you are trying to find that out, why, you want to smoke me out right now.

Mr. Boyle: I think that the—

The Court: I will hear your argument—do you necessarily want him to take it down or do you just want to make it informally?

• • •

47 Mr. Boyle: There was an objection to it.

The Court: You asked whom?

Mr. Boyle: Mr. Gertz.

Mr. Giampietro: I don't recall that.

The Court: Let me see the document.

Mr. Boyle: (Handing document.)

All right. Well, here, what I want to do is this, what I would do—I asked him if there was—oh, gosh, I forgot. I don't remember. I thought that I did, but—

The Court: Well, this is not in.

Mr. Boyle: No, it is not in.

I will, without—but this is what we are talking about. I have identified it as Plaintiff's—a Defendant's Exhibit, Defendant's Group Exhibit—Defendant's Group Exhibit D-1 through '9, which were the photostated copies of the Chicago Daily News and the Chicago Sun-Times, relating to the publicity given to Nuccio.

The Court: Well, will you stipulate that the Nuccio trial was widely publicized in the Chicago press?

48 Mr. Boyle: Well, if you could just—

The Court: I am asking him.

Mr. Giampietro: There was some publicity.

Mr. Boyle: Well, if counsel would go this, then, your Honor—you remember, I subpoenaed the Sun-Times, solely to show that there was publicity in the Sun-Times. He claimed a privilege. I said that I just wanted to have somebody here to give me the foundational proof to rule on these matters.

Mr. Gertz said that if it was just a question of the form of them and were they true copies, that he agreed to stipulate as to that.

Mr. Giampietro: Oh, yes. No question about that.

Mr. Boyle: All right. Well, then, I would offer them at this time to his Honor, in evidence, on the issue of whether the publicity given to the Nuccio trial created yet a second issue.

Now, if his objection is raised to the substance of that tender, that's one thing, but the form is another, and I say that he stipulated with me about the form.

49 Mr. Giampietro: Right. We did stipulate about the form, there is no question about that.

Mr. Boyle: Yes.

Mr. Giampietro: No question about that.

Mr. Boyle: Yes, but I am offering, then, as Defendant's Group Exhibit D-1 through D-9 into evidence as being, as to being the photostats of the newspaper publicity given to the Nuccio trial in Chicago by the Chicago—by the Chicago newspapers.

The Court: That's your entire foundation?

Mr. Boyle: As probative—yes,—as probative, as probative of the issue as to whether the trial itself was yet another public issue.

Mr. Giampietro: I have a couple of objections to that.

The Court: Yes.

Mr. Giampietro: First, first of all—

The Court: You may make them.

Mr. Giampietro: First of all, there is no showing that Mr. Stanley, or anybody at American Opinion,

knew of those articles at the time that they commissioned or wrote their article, so there is no evidence
50 that they knew that there was any such public issue at the time, and that's what really counts.

The Court: All right. Go ahead.

Mr. Giampietro: Secondly, there is no showing in there that any of these articles dealt with Mr. Gertz, and that goes to the foundation—

The Court: Well, I will sustain the objection to the exhibits. I don't think that under any circumstances in the case do they have any probative value at all.

Mr. Boyle: Well, I am going to ask that I be given an opportunity to—well, I have made my offer.

The Court: You have made your offer.

Mr. Boyle: That is right. Thank you.

The Court: All right. Now, you had better go ahead and make your argument to me as to why you think that this evidence shows that he is a public figure.

You found out—and the record will show this—that at the time of the voir dire examination there was not, as I recall, a single member of the panel who had ever heard of Elmer Gertz; at least I got no response.

51 Mr. Gertz: That's right.

Mr. Giampietro: That's right.

The Court: Not any response from the panel. That's number one.

Number two you have shown that he has been active in legal circles. You have shown that he has done some writing. You have shown that he has appeared on some television stations, and so has one

of his witnesses, Frank Greenberg who testified here.

Now, is it your contention that when a lawyer becomes prominent and gets into—and becomes engaged in some type of other activities as well as his law practice, his law business, that he becomes a public figure to the point where he can be used in a situation like this and find himself helpless to defend himself against libelous material on the basis that he is privileged? I mean under the First Amendment?

Mr. Boyle: It is my contention, your Honor, that the public—that the philosophy behind extending the language of the ruling of the Sullivan versus Times case to a public figure was basically the access of the
52 public figure to the mass media of the information in order that he might respond to any kind of remarks.

The Court: Do you think that Mr. Gertz should have taken the podium and said "I am not a Communist"?

Mr. Boyle: I think that Mr. Gertz certainly would have had, and continues to have, the public eye for that purpose and that his comments as a public person have, in the past, covered a great range of subjects and I think that he would have at his disposal a continuing availability, an ear to the public to give the public his own views on any subject, including the most vituperative argument against the John Birch Society, or anything else, because he has had this access, and, with that philosophy, I would say that if—if a lawyer had achieved notoriety by being a great golfer and that's all, then I would say, now,

there is a real question. But when this kind of a lawyer, whose great prominence arose dually, both through his notoriety that was achieved by his handling of prominent cases and by his altogether different role as an author, as a newspaper writer, his —he really has an identity that makes him, I think,
53 a public figure in the fullest sense.

The thing that we have at issue is, are we to take the lawyer and say that he can be editorializing, he can be writing, he can be communicating with the masses, but, because he is a lawyer, the courts are going to call him the sacred cow of the times, the Times Doctrine and say that when he gets into that courtroom and has a case going, no one can make any comments about him at all in any political area, even if the trial itself is fought—I mean, whether it is thought, rightfully or wrongfully, to be part of a political area.

Further, it is my contention—and I don't know whether there is any law on it or not, but I would urge it, that a lawyer, when he starts representing a client so as to initiate a lawsuit, becomes a public official in his capacity as officer of the court, and one looks and sees that people like deputy sheriffs in their functions have been held to be public officials, and I think that there is nothing whatsoever wrong with the notion that an officer of the judicial branch of the government, when he is functioning as such, would be a public official within the purview of the
54 Times case, provided that there was a sufficient public issue in what he was doing.

Now, in this particular case the record shows that

Mr. Gertz filed a lawsuit against an officer, right at the time when the officer was employed—was embroiled in criminal defense of himself, and, further, that as a lawyer, as a lawyer and as a continuing officer of the court, under the discipline of the Supreme Court of this state, he appeared at an inquest and functioned as an officer of the court, so that in that regard I think—I think that it is not at all difficult to say that as to the issue which, by filing this suit, he participated in, as to the public issue of the troubles and tribulations of this policeman, he was a public official, not merely a public figure, and, by either role, your Honor, I say there were two public issues; the trial of Nuccio himself, the public issue of whether this, whether this particular case was written—whether this particular case was within the public issue of a Communist conspiracy to harass these people, and also that Mr. Gertz existed in a dual capacity, both as a public officer, by virtue of
55 being an officer of the court, and as a public figure by virtue of his totally disassociated activities of author, et cetera.

Now, in addition to that, when one looks at the evidence, the evidence simply shows that the reputation of Mr. Stang was such that the editor relied upon him.

The record further shows that there was no knowledge of Mr. Gertz—

The Court: Well, I understand that.

Mr. Boyle: All right. So that I say that if Mr. Gertz is held to be either a public official or a public figure, and if Mr. Gertz is held to have been asso-

ciated with these two issues, then Mr. Gertz is bound by the rule of the Times case and he must prove actual malice.

My contention is that there was no publication with knowledge of the probable falsity of the promulgated matter with the strong degree of knowledge required to overcome this privilege, and I don't think that there is an issue that is submittable to the jury on any one of those points.

The Court: All right. I have no problem; if he
56 is considered to be a public figure, there is a directed verdict. There is no question about that. I mean, there is no issue left. I mean, if he is a "public figure". I mean, and that there has been no malice shown.

Mr. Gertz: With the distribution of the article for a year afterward—

Mr. Giampietro: Plus the fact that they didn't even talk to Nuccio's attorney. I think that's enough.

The Court: I can say now, without any question, and it will appear of record in the case, that on the basis of the evidence that I have heard, that if I—if I should hold, or some other court should hold, that he is a public figure, that so far as the rest of the evidence is concerned, I would direct a verdict on the question of malice, on the evidence that I have heard. I wouldn't even submit it to the jury.

Mr. Boyle: Would you do the same if he were a public official, your Honor, under the alternate theory?

The Court: Why, of course, but I don't—but you haven't convinced me of either one, and so—I will hear from you, Counsel.

57 Mr. Giampietro: All right. First of all, it has been specifically held in the Harkaway case—

The Court: I have read these cases and I know your memorandum. Do you want to add anything to it?

Mr. Giampietro: Well, yes, I would like to add just a couple of things.

The Court: All right.

Mr. Giampietro: First of all, it has been specifically held that an attorney is not, in and of himself, in and of itself, a "public official".

The Court: I understand that.

Mr. Giampietro: All right.

First of all, in response to Mr. Boyle's statement there was no trial involved in which Mr. Gertz participated.

The Court: I know that.

Mr. Giampietro: So he can't say that there was a public issue on a trial because Mr. Gertz wasn't involved in that at all. He didn't speak out in any way on the matter. He did not thrust himself into this issue. He made no public statements. Not of any kind. He wasn't available—did not open himself up
58 to return comment, not available, therefore, to opening himself up to return comment on any of this, not because of anything he had said.

As to any notoriety or knowledge as to articles and books beforehand which he may have written, this article here about which we are suing does not refer to him in that capacity, and, of course, the best evidence of that is the fact that these guys at American Opinion never heard of him. They couldn't have been talking about him as a public official because

they didn't know who he was. Not anymore than they knew about me or Mr. Boyle. Or anybody else out on the street.

I think that those cases specifically hold he must have spoken out in his public, official capacity.

The Court: I am not going to direct a verdict. I am going to submit the case to the jury on the basis—on the basis that this is a simple libel action in which a lawyer is involved, and the question will be to give them proper instructions under that theory of the case. If I am wrong, it can be taken care of, either by myself or by some other court at a later time, if I am wrong.

59 If I am wrong, I have already stated that my alternative finding would be that there isn't enough evidence to submit to a jury.

Mr. Giampietro: Your Honor, may I, on that last point, may I ask you a question: How does your feeling differ now between your decision to deny the motions for summary judgment? Isn't the evidence in the same state as it was then regarding the issue of malice?

Mr. Boyle: Not at all; there is an important distinction.

His Honor coupled the lack of knowledge with a word in an affidavit which modified—

The Court: That's true.

Mr. Boyle: —the reputation of this man, and there is no evidence whatsoever of that nature in this proceeding.

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Mr. Boyle: May it please the Court, there is one other thing that I have to do for the record and that

is to make an offer of proof with reference to—with
61 reference to some stuff—I will do it as quickly as possible.

The Court: Well, do it right now.

Mr. Boyle: All right. Let the record show that if Mr. Allen Stang were allowed to testify he would testify as follows: That after he—

Mr. Gertz: Mr. Stang isn't here.

Mr. Giampietro: Stanley.

Mr. Boyle: Well, Mr. Stanley, I mean.

That Mr. Stanley would testify, as follows: That after his receipt of information of summons in this lawsuit, he went in an effort to check the accuracy or lack of accuracy in the article itself, and, in so doing, he inquired of certain books and publications in his office, they being Exhibits—Defendant's Exhibit F for identification, known as Appendix 9 of the Un-American Propaganda Activities, which is an official text printed in the Government Printing Office, bearing the date of 1944, and that he did this in the month of June 1969.

Further, this exhibit is identified as "Special Committee on Un-American Activities, House of Representatives, 78th Congress, Second Session," and that in making inquiry of Index 9—

62 The Court: You don't have to go into any great detail on this. It is the substance of your showing—

Mr. Boyle: All right. Very well, your Honor.

The Court: I don't care what the exhibit shows.

Mr. Boyle: All right, your Honor, but—very well, your Honor.

But he would show by these tendered exhibits—as I understand the law, if I don't make an offer in terms of—

The Court: You may make an offer. Go ahead.

Mr. Boyle: In terms of the propriety of the proof, that it is the subject of—

The Court: Yes. Go ahead.

Mr. Boyle: And in inquiring of the book, he found on Page 1902 thereof the name of Elmer Gertz, referring to Page 302 of the text.

The Court: All I can say right now, that whatever it shows there, it won't be admissible here, but go ahead.

63 Mr. Boyle: On Page 302 of the text he found the name of Elmer Gertz listed with the following words: "Guest lecturer, author of 'The People Versus The Chicago Tribune,' 'Frank Harris, a Study in Black and White,' 'The Epic of the Prairie State,' and other writings, formerly branch circulation manager of the Chicago Evening American, faculty member of the Jewish People's Institute, Director of Public Relations of Illinois Police Association, founder of the Civil War Round Table of the Chicago Chapter, and Chairman of the Committee"—

The Court: And other facts shown on that page.

Mr. Boyle: And other facts shown on that page, including the lecture—including the "Abraham Lincoln Association, practicing attorney."

Further, he would testify that—

Mr. Giampietro: May the record show our objection?

The Court: Yes, yes; the record may show your objection. I sustain the objection.

Mr. Boyle: Further, the witness would testify that another document that he inquired of, which is
64 marked Defendant's Exhibit H for identification, is an official publication sealed under the Clerk of the House of Representatives' Seal, bearing the date of September 21, 1970;

That he saw this article in the month of June 1969 and that the coverpage on the article read, as follows: "Report on the National Lawyers Association" —"National Lawyers Guild, The Legal Bulwark of the Communist Party," bearing the date September 17, 1950.

Further, he would testify—

Mr. Gertz: Objection.

Mr. Giampietro: Again I would object.

Mr. Boyle: Further he would testify—

The Court: Sustained.

Mr. Boyle: Further he would testify that he made an additional inquiry in order to ascertain the truth or falsity of some of the allegations, particularly the allegation relating to Communist Front Organizations in the libel, and he inquired of another book in the library of his office in Belmont, Massachusetts, in the month of June 1969, and I refer to Defendant's Exhibit G for identification, which is entitled "Guide To Subversive Organizations and Publications and
65 Indexes," revised and published December 31, 1961, to supersede Guide published on January 7, 1957, which is—and under the Seal of the Clerk of the United States House of Representatives as an official publication of the Committee on Un-American Activities, U. S. House of Representatives, and the matters therein relating to the listing of the Abraham Lincoln

Association and the National Lawyers Guild, as having been cited by the Attorney General of the United States as a Communist Front Organization.

Mr. Giampietro: I object.

Mr. Boyle: All right.

The Court: That's it?

Mr. Boyle: No. Almost. Wait a minute.

(Brief interruption.)

Mr. Boyle: No; that's all.

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68 The Court: All right. Let's take up Plaintiff's tendered instructions first. That may eliminate some of yours on the basis that they are already given.

Now, I have looked at—does he have copies?

Mr. Gertz: Yes.

Mr. Giampietro: Yes.

The Court: All right. Just take a quick look at these. Some of them are—you won't have any problems about some of them.

Number one is given; it is simply a stock instruction.

So is number two. Number three is stock. Number four will be given.

Mr. Boyle: Oh, are you on his?

The Court: Yes. Number one and two will be given, they are stock. Number three is stock. Number four you wouldn't want yourself.

69 Number four will be given, saying that I'd have to—

Mr. Boyle: No objection.

The Court: Now, number five, I assume, deals with the author?

Mr. Giampietro: Yes.

Mr. Boyle: Oh, now, that—I object very strenuously to that.

The Court: You don't have to be too strenuous because I think that your objection is well taken. He is no more in the control of—in fact, he is a free lance writer, he is equally accessible to both of you. He's not an agent. I am going to refuse it. I am going to refuse five.

Mr. Giampietro: All right. We will show our objection.

The Court: Yes.

Number six, given, and number seven, given.

Number eight, that's stock. Given.

Number nine simply says on account of alleged libels—

Mr. Boyle: Yes, it should be.

70 The Court: Well, I don't know put it "alleged"; what's the difference.

Mr. Boyle: Well—

Mr. Gertz: So that's given?

The Court: That's given.

Mr. Boyle: "Alleged"; okay.

The Court: Now, I have got a question mark on number ten. Actually, the wording of the libel is "Leninist" rather than—

Mr. Boyle: That is right.

The Court: Rather than "Communist."

I can't find the word "Communist"—

Mr. Giampietro: Yes, it is there.

The Court: Well, if you can find it, if you can point it out, you are doing better than I can.

Mr. Boyle: Well, no, they did not—

Mr. Gertz: "Marxist."

Mr. Giampietro: "Communist-fronter."

Mr. Boyle: They—no.

Mr. Gertz: "Marxist."

The Court: Just a minute. Wait a minute. There is a "Leninist" which I quote as such. And there may be a "Communist-fronter."

71 Mr. Boyle: There is a "Communist-fronter". There is a "Marxist", and there is a "Revolutionary". There is a "Leninist."

The Court: Well, I am only going to say that it is libelous "per se" to call him a "Leninist," I mean—

Mr. Gertz: And a "Marxist".

The Court: Well, "Marxist" isn't libelous per se. At least I haven't—does it say that you are a "Marxist"?

Where does it say that? It says that you are connected with a Marxist-something, but—

Mr. Gertz: "Communist organization . . . Leninist . . . Communist-fronter . . . Leninist . . . Communist-fronter."

What about the word "Red"?

Mr. Giampietro: Yes.

Mr. Boyle: ". . . of Red Guild . . ."

They didn't call you "Red" in there, they said that the "Guild" was "Red" and you were of it.

The Court: I am going to insert "Leninist".

Mr. Boyle: "Leninist" and "Communist-fronter," I think.

72 The Court: "Leninist" and "Communist-fronter."

Mr. Boyle: All right.

", . . called Plaintiff a 'Leninist' "—

Mr. Gertz: What about something to do with—

The Court: Well, that's enough. What's the purpose of putting something else in? I mean, if that's in there, what's the purpose of putting something else in?

Well, number ten I assume is given over your objection?

Mr. Boyle: Yes, sir.

The Court: All right. I will show your objection.

Number eleven, I changed the word "actual" to "pecuniary".

Mr. Giampietro: Any objection?

The Court: Is there any objection, Counsel?

Is there any objection to changing that?

Mr. Giampietro: No.

The Court: All right. Any objection to changing nine?

73 Mr. Giampietro: No.

The Court: I assume that you object to number eleven also?

Mr. Boyle: Yes, Judge. I do.

The Court: All right. I will show the objection. It is overruled.

Now, do you have an instruction on twelve, on mental suffering and injury to reputation?

Mr. Giampietro: That's—well, that's the next one.

The Court: Yes. Number twelve. I have got number twelve. ". . . the publication complained of . . ." —is that your thirteen?

Mr. Boyle: It is twelve.

The Court: Twelve?

Mr. Gertz: Oh, what do you mean by "mental suffering"?

The Court: What I am saying—what I am asking is, do you have an instruction that says that mental suffering and injury to reptuation as a result need not be proved but may be inferred from the nature of the injury?

74 I am asking you if you have any authority to justify giving that instruction?

Mr.. Giampietro: Well, that's the general law—

The Court: That's the point that I want.

Mr. Giampietro: It is found in—wait a minute.

The Court: I think that you are correct but I want to—I would like to know what authority you base it on. Ordinarily "mental suffering" doesn't count, but maybe it does in this type of a case.

Mr. Boyle: Well, if it please the Court, may I show my objection to that? To the last one?

The Court: I will certainly show your objection to it.

Mr. Boyle: Yes.

The Court: I say,—do you say that it is not I.L.P.?

Mr. Giampietro: No; it is in Illinois Law and Practice; it is not in I.P.I. It is not in I.P.I.

The Court: Well, I suppose that the jury—I sup-

75 pose that the injury to the reputation certainly can be inferred from it; I mean, it is not just—if it is a libel per se it has to be true. And I would assume "mental suffering" would have to be inferred if it is a libel per se.

Mr. Gertz: Your Honor, there are cases on that.

The Court: Well, there must be.

I will put number twelve to one side. You can probably come up with a case before we instruct, but I

expect to give it, unless somebody gives me, I mean, unless somebody can find the law—I expect you to find something on it.

Mr. Gertz: We will find something on it.

Mr. Giampietro: Yes.

The Court: All right. Number thirteen. It seems to me that subject to Number—six—subject to Number six, it is a good instruction, but I assume that you object to all of these instructions being given?

Mr. Boyle: Yes, I do.

76 The Court: Number six is the only thing that I have a question mark on, on "mental suffering".

Mr. Boyle: There is no evidence in the record so it would have to be there by virtue of a presumption.

The Court: That's right.

Mr. Boyle: And I object to it.

The Court: All right. Number fourteen will be given as to the burden—as to the essential elements, and I assume that you object to that?

Mr. Boyle: Yes, I do.

The Court: That will be given.

Now, number fifteen, you can read that here.

(Brief interruption.)

Mr. Boyle: Well, I think that this is a perfunctory instruction; I mean, a directive instruction, because, because it is not harmonized with the concept that reliance on someone else can be taken with respect to, with respect to punitive damages, and this instruction—

The Court: We have not reached that point yet.

77 Mr. Boyle: I know, but this seems to state that they don't have to give any weight or any consideration at all to the fact of relying upon another, and, for those reasons, I object to it.

The Court: All right, you object.

Mr. Giampietro: I think that it is clear, that the law is clear that re-publishing a libel and repeating it, repeating a libel, from someone else, is not a defense.

The Court: Well, I think that that's true; I mean, if it is a libel to begin with and someone else publishes it without, without any effort to find out whether it is true or false—now, there may be some mitigation but it is not a complete defense. Fifteen will be given.

Mr. Gertz: Is that with—

The Court: So far as the verdict is concerned, I will give those, so, in effect, you have them now.

So, let's take up—

Mr. Giampietro: Your Honor, inadvertently we left out an instruction on punitive damages.

78 The Court: I didn't think that that was inadvertent, I thought that you were making my life much easier.

Mr. Gertz: I reminded him of it.

Mr. Giampietro: Yes. This would be the—

The Court: I thought that my work was all done.

Mr. Gertz: It is a simple one.

Mr. Giampietro: It is just a very short one. "In assessing damages, you may also award Plaintiff such amount as will punish Defendant for publishing the untrue, defamatory statements"—". . . concerning Plaintiff."

The Court: If you find what?

Mr. Gertz: Just if it is untrue.

The Court: Now wait—just if it is untrue?

Mr. Boyle: Oh, I think that malice is required.

The Court: Don't you have to—

Mr. Boyle: I think that malice has to be hitched to it.

The Court: Is that—that's your single instruction, is it?

79 Mr. Giampietro: Malice is—malice is presumed in libel per se and punitive damages flow from that, if the jury so desires.

The Court: You are satisfied that you don't have to prove any—I mean, that malice is—

Mr. Gertz: That's right, any actual malice.

(Brief interruption.)

Mr. Giampietro: I can provide authority.

The Court: All right. Provide that authority and it will be given.

Mr. Boyle: If it please the Court, my objection to that instruction?

The Court: Yes. Overruled.

Mr. Boyle: You are overruling my objection?

The Court: Yes. Overruled.

(Brief interruption.)

The Court: All right. Now, let's take up Plaintiff's—there are a number of these that you will want to withdraw.

Mr. Boyle: Oh, Judge, the only one that I still am left with, I think—

80 The Court: All right. You withdraw all but what?

Mr. Boyle: Well, I think that they are all—

The Court: They are all covered?

Mr. Boyle: Oh, I think so, but they are all stock except the last one which I tender, which is my I. The letter "I" instruction.

The Court: I assume that you object to that?

Mr. Gertz: Yes.

Mr. Giampietro: Yes.

Mr. Gertz: Because—

The Court: Well, I will be refused.

Mr. Giampietro: Is this refused?

Mr. Boyle: Yes.

The Court: Yes.

Mr. Giampietro: All right.

Mr. Boyle: Refused. Then we have one that we were reserving, I think.

Mr. Gertz: Really, one and a part of another.

Mr. Boyle: Would you provide me with a copy of that, Wayne, the one that you just—

81 Mr. Giampietro: Yes. Sure.

Mr. Gertz: Your Honor, could we impose upon your secretary to type—

The Court: Oh, yes, she will type it for you, if you will just give it to her.

Mr. Gertz: Yes. This is a set without identification numbers.

The Court: I don't care. I don't care about those, you keep it.

Mr. Gertz: Because in the State Courts—

The Court: Well, I know, but the jury doesn't get that. They don't get them here.

Mr. Boyle: Do they get the exhibits here?

The Court: They get the exhibits but not the instructions.

(Brief interruption.)

Mr. Boyle: Now, which ones were we reserving ruling on?

The Court: Well, we reserved on twelve; Plaintiff's Exhibit 5, the one we pulled out. Thirteen. Twelve and thirteen.

Mr. Boyle: All right.

The Court: Twelve and thirteen.

Mr. Gertz: And item five of—

82 The Court: Item five of thirteen. It is twelve and thirteen.

Mr. Boyle: Okay.

Mr. Gertz: Now, dig that up.

The Court: I particularly want the law on the proposition that malice is presumed and you don't even have to give an instruction on it, on wilful and wanton.

(Discussion off the record.)

The Court: How much time do you want to argue?

Mr. Gertz: About forty-five minutes?

The Court: Forty-five minutes is fine.

Mr. Gertz: How do you want to divide that up, half an hour and fifteen minutes?

The Court: Thirty and fifteen? That's agreeable.

Mr. Gertz: Thirty and fifteen.

Mr. Boyle: I will ask for half an hour. I probably won't take more than fifteen minutes, but it's always nice to have.

(Discussion off the record.)

Mr. Boyle: Now, here is this other part. These

83 are those exhibits all cut out so that there is nothing—

The Court: I understand.

Mr. Gertz: You are admitting those, over our objection?

The Court: Yes. That's right.

Mr. Boyle: Right. And these are the Group 9.

Mr. Gertz: Those are clippings going back to 1945.

Mr. Boyle: Now, these aren't for the jury; these were for his Honor to deliberate upon when he decided—

The Court: They may be admitted for that purpose, not to go to the jury.

Mr. Boyle: That's exactly right. Exactly right. So I will just hang onto them. They aren't going anywhere.

(Interruption.)

Mr. Gertz: We have that, your Honor.

The Court: What's it say?

Mr. Gertz: It says that exemplary damages may be awarded on the basis of implied—

The Court: All right.

84 Mr. Giampietro: It is quoted in that Van Norman case.

• • •

219 CLOSING ARGUMENT,
MR. BOYLE, ATTORNEY FOR DEFENDANT

• • •

He didn't call them up. He didn't write them a letter. He didn't advise them about anything.

I think that you are entitled, and he is entitled to the presumption, that Stang wasn't right in all respects in this case. I don't think that there are

any two ways about it. As I stand here today, I can speak on behalf of my client and say that we don't think that Elmer Gertz is a Communist. We do think that we are a counterforce, my client is, against, not just against witches but something that is real, something that is out there now and our Editor spoke, or this magazine spoke, with a lot of hair on its chest, and we are content to let the kind of Government that we are trying to save be perpetuated by giving you the control over that voice. . . .

• • •

222 HEARING ON MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

The Clerk: 69 C 1288, Gertz versus Welch; ruling on motions.

Mr. Gertz: Good morning, your Honor.

The Court: Good morning.

Mr. Boyle: Good morning, Judge.

The Court: Good morning.

I have ready to give to you gentlemen this morning a memorandum opinion disposing of the Motion for Judgment notwithstanding the verdict, or, in the alternative, for a new trial, and that will explain the reasons for doing what I am about to do; it will explain the reasons for the judgment that I have reached that I have no alternative under the law as the law now exists except to grant the Motion for Judgment notwithstanding the verdict and, in effect, vacate the verdict of the Jury awarding the Plaintiff damages in the amount of $50,000.

You gentlemen, I think, already know that I have spent some considerable time on this case already; I wrote two opinions.

223 I permitted the case to go to the Jury and I got, at least, for the benefit of the Plaintiff, the Jury's judgment about the—the Jury's judgment as to what the damages in this case reasonably should be, based on what the Jury heard and based on the instructions that I gave the Jury.

But subsequent to the trial of the case I made a more thorough investigation into the law and I am convinced in my own mind that the law as it now exists, and until the Supreme Court does something to change it, has extended the Times Rule to not only public officials, public figures, but also to matters of public interest, and all this is outlined in the opinion.

Not only is that true insofar as the Courts of Appeal, a number of Court of Appeal decisions, but, as Mr. Gertz well knows, it has also been true in the Illinois, the Supreme Court of Illinois, in Farnsworth v. the Tribune, certainly did the same thing,

224 and, by analogy to all of these cases, I don't think that I have any alternative here except to follow the law as I think that the law has been set forth in these cases.

I will make this one personal observation and then that will finish any statement that I may want to make: A Trial Judge's views as to what the law should be—I think you will agree with me—can't be substituted for what, and in this case where a member of the legal profession was involved, I think that I had some difficulty in being objective, and particu-

larly where there was a lawyer involved who was, on the face of it, at least, maligned by what proved to be a baseless charge, and while I strongly favor a free press, I also favor a press that is responsible, and I think that a responsible press should be subject to the same requirements for meeting ordinary standards of decent behavior as other citizens, and I would hope that the Supreme Court—which I understand is considering this very subject now—would arrive at that same conclusion, but with the law, as I think that it has clearly been stated in these opinions, I don't think that this verdict can stand.

Mr. Gertz: Your Honor, would there be any necessity for any bond other than a cost bond here?

The Court: No, I don't—well, I don't know.

Mr. Boyle: The Defendant would certainly waive the necessity of posting a bond—

The Court: You will waive the necessity of a bond?

Mr. Boyle: The necessity for posting a cost bond, sure.

The Court: You have got your liquidated damages and so now it is up to you to see if you can sustain it.

• • •

DEFENDANT'S EXHIBITS

EXHIBIT A

MOTION

Now comes plaintiff, ELMER GERTZ, by his attorney, WAYNE B. GIAMPIETRO, and moves for a protective order herein, and in support thereof represents unto the court as follows:

1. Plaintiff has been served with a notice of deposition in which notice it is stated that defendant intends to ask plaintiff the following question, among others:

The names, publication dates, and where they appeared of all articles and books ever written by plaintiff.

2. Plaintiff has written the following books, as listed in Who's Who in America: Frank Harris: A Study in Black and White; A Handful of Clients; Moment of Madness; The People v. Jack Ruby. In addition, he has written thousands of articles in numerous magazines and newspapers and it is impossible for him to recall all of these several thousand articles. He has kept no record of them since he began writing in his late teens. These articles have appeared in rep-

utable publications, including historical, legal, literary, encyclopedias and newspapers and other publications.

3. Said notice of deposition also states that plaintiff is to be asked to state each and every speech he has give, the place where such speech was given, and the topic thereof.

4. Plaintiff has given speeches from his boyhood continuously until the present time and it would be impossible for him to recall each and every one of these speeches, which have been given before every kind of audience, including high schools, colleges and various public and private groups. Plaintiff uses no notes for such speeches but gives them extemperaneously, and has kept no records of these speeches, and therefore has no way in which to determine the subject matter of these speeches.

5. Said notice of deposition also indicates that plaintiff is to be asked to state each and every appearance he has made on a radio and television station, the dates thereof, the name of the station and the topic of the discussion.

6. Plaintiff has been an attorney for forty years and in the course of his legal career has appeared on almost every radio and television station in the city of Chicago several times, as well as stations in Dallas, Boston, New York, New Hampshire and other places. It would be impossible for him to list or state the dates of such appearances or the subject matter discussed therein as he has kept no records of such appearances.

WHEREFORE, plaintiff prays that this court enter an order limiting the scope of the examination in these respects.

/s/ Wayne B. Giampietro
WAYNE B. GIAMPIETRO
120 S. LaSalle Street
Chicago, Illinois 60603
726-6116

EXHIBIT B

MISCELLANEOUS WRITINGS BY ELMER GERTZ

Chicago Sun and Chicago Sun-Times

I have written reviews of books and plays from the first publication of this newspaper to date. I have probably written several hundred reviews during these many years.

Chicago Daily News

During a period of time, I have written many book reviews for this publication.

Chicago Evening Post

When I was a young man, I wrote reviews for this now defunct newspaper on books.

Chicago Defender

I wrote poetry, reviews and miscellaneous articles for this publication while I was at college and at subsequent periods.

Chicago Courier

For a period of time, I wrote weekly articles in which I popularized legal problems.

The Nation

For years I wrote for this publication on politics and occasionally on other subjects, including book reviews. In recent years, I have written much less than earlier.

Chicago Jewish Forum

This is a quarterly publication for which I wrote for a period of thirty years. It is now out of existence. I had a column for a period of years dealing with civil rights and I wrote articles on a variety of subjects, including journalism, literature and history, all with a Jewish angle.

The Sentinel

This is an anglo-Jewish publication for which I have occasionally written on matters of Jewish interest.

Journal of the Illinois State Historical Society

During a period of years, I have occasionally written for this publication on historical themes, including Chicago journalims, Galena Generals, the Black Laws of Illinois, book reviews, etc.

B'nai B'rith Monthly and National Jewish Monthly

(This is the same publication under change of

name.) Occasionally during the last forty years or more, I have written articles on themes of Jewish interest.

Facts

I believe that this publication is now defunct. During a long period of time, I wrote popularizations of legal subjects.

Chicago Daily Law Bulletin

For several years I wrote book reviews and occasionally articles dealing with civil rights.

Lincoln Herald

This is a publication dealing with Lincoln and the Civil War. During a period of years, I have written articles and book reviews.

Autograph Collector's Journal and Manuscripts.

(This is the same publication under different names) During a period of years, I have written articles dealing with my collecting interests, including President Truman, Bernard Shaw, Clarence Darrow, Frank Harris, Carl Sandburg and other subjects.

Shaw Society Newsletter

For a period of years, I was President of the Shaw Society of Chicago, which had a montly publication for which I wrote articles pertaining to Shaw.

The Paper

This was a weekly publication dealing with various aspects of the arts and life in Chicago. I wrote articles almost every week for it on journalism, my reminiscences of public and literary figures, my family and many other themes.

GENERAL

From childhood on, I have written almost continuously for newspapers and magazines. I suppose that I have written thousands of articles. I am sure that nobody, including myself, has a full set of all that I wrote.

H. STUART CUNNINGHAM
CLERK
FILED
FEB - 8 1971

C 42

A 'prude' fights for sexy books

'I would defend the right of any man to be a pig,' says lawyer Elmer Gertz, battler for the freedom to read

By Lois Wille

Chicago's leading defender of man's right to read sexy books and see sexy movies says he's really just an old-fashioned prude.

Attorney Elmer Gertz, 61, a silver-haired, courtly, soft-voiced gentleman who wouldn't think of swearing.

He refuses to see "pornographic movies — unless he's preparing a case for showing them. "Personally," he says, "I have a great distaste for many of the things I've defended."

HE ONCE CAUGHT his 10-year-old son reading Frank Harris' sexually candid biography, "My Life and Loves," and promptly hid it in the basement.

"I thought the boy was a little young," Gertz says, looking embarrassed.

Months later his basement was flooded. The Harris book — a valuable first edition sent to Gertz by the author — was destroyed.

He must have thought there was a moral in that, because years later, when he spied another son reading Henry Miller's philosophical novel, "Tropic of Cancer," Gertz just let the boy read on.

"I noticed he never finished it," Gertz said. "I asked him why. He said it was dull — and dirty."

Insight

BOTH "TROPIC" AND "My Life and Loves" are in Chicago bookstores today because of Elmer Gertz, the city's senior citizen of civil liberties.

As lawyer for Grove Press, he wiped out Chicago police bans on the Miller and Harris books, and the works of the Marquis de Sade.

It was his legal defense of one nude movie that killed Chicago's motion picture censorship ordinance last year.

Recently, he defended bookseller Barbara Kaye against charges of selling obscene material — the underground newspaper Seed. The court held that the newspaper, judged as a whole, was not obscene and the charges were dismissed.

ELMER GERTZ'S censorship battles have drastically altered what we can read and see in Chicago today. But he is probably better known as the man who got Nathan Leopold out of prison after Leopold had served 33 years.

In 1958 Gertz's brilliant arguments persuaded a seemingly hostile Illinois Parole and Pardon Board to release Leopold, the surviving half of the notorious pair of teen-agers who murdered 14-year-old Bobby Franks in 1924. Leopold has led a model life since his release.

Last week Gertz pressed with the board to parole another Chicago killer he considers rehabilitated, Paul Crump. Gertz helped save Crump from the electric chair in 1962. The request was denied Wednesday.

THERE SEEMS TO be a sharp line between his two great causes — freedom of expression and freedom for rehabilitated prisoners.

When he talks about Crump and Leopold, he sounds like a devoted friend, deeply committed to them. He's not always so fond of the material he defends from censorship bans.

He thinks his landmark cases, "Tropic of Cancer" and "My Life and Loves," are great literature. Some of his nude movie cases, however, are "a lot of garbage," he says. "But I would defend the right of any man to be a pig."

"These marginal works must be defended, since they exist, to guard against creeping en-

Chicago lawyer Elmer Gertz
"I am here to be vigilant day and night"

croachment of the Bill of Rights and its guarantees of freedom of expression. "All before can step on [illegible] reading a book

Turn to Page A-5, Column 1

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C 3/4-13

CHICAGO DAILY NEWS, Wednesday, March 25, 1970

Insight

A 'prude' defends sexy books, films

[illegible]

BY opening a movie because they think it's obscene, they send many try to stop or ban reading a book or seeing a movie because they disagree with it personally," he says.

HE SIMPLY CAN'T [illegible] the idea of censors — police, judges, [illegible] — acting as moral guardians. "I remember [illegible] when he was small he would [illegible] what he can read or see.

"We have the right to decide for ourselves, by ourselves or not [illegible]," he argued. He said every law needs to certainly a standard.

"A movie can not [illegible] for children, even if the girls fall on a bag.

"BUT IN THE area where most should have the greatest freedom, we customarily say, 'No, you can't get at literature on consenting adults.'

"And the one who tells us this may be a judge who never reads or who has no conception of taste. Or a cop who doesn't know how to read. A cop with the whole spending habit."

Like a student of fact, Cohen has four cases currently from policemen that have almost ended action groups.

Cases against police

That brings up another of his [illegible] [illegible] [illegible]

Exhibit E

Effective police protection
for our homes and our lives
is a danger—unless
law-enforcement officers
are protected
against unjust smears

Behind Those "Police Brutality" Charges

BY FRED E. INBAU

PATROLLING his beat in Rochester, N.Y., on a Sunday night in May 1965, policeman Mike Rotolo spotted a hoodlum in a group of teen-age boys smashing a lighted sign. "Hey, you in the white shirt, you're under arrest!" he yelled, chasing the fleeing youths behind a building. All at once he was alone, facing the gang.

"Keep your hands off him, white man," growled a voice. A glint of metal flashed. As 160-pound Rotolo cautiously approached, the burly vandal charged. The policeman grabbed him, managed to snap one handcuff on a wrist, but the youth yanked loose and swung the dangling cuff at Rotolo. The patrolman fought back with his nightstick. Seconds later, more police arrived and took the young man away, charging him with malicious mischief, assault and resisting arrest.

Within 48 hours a militant civil-rights group called FIGHT held a mass meeting on "police brutality," and a spokesman demanded that "racial bigots" be purged from the police force. The next day a superior told Mike Rotolo that he was suspended. The youth's parents had charged him with "brutality." Suddenly, publicity caused the officer's wife to be snubbed, and their three-year-old boy ran home crying that he could no longer play at a friend's house.

Eventually, Rotolo was cleared, but the ugly smear continues to haunt him. Recently a young man he arrested during a street disorder

J. Murphy laments, "is now apprehensive about doing *anything* in these situations because of always being second-guessed. If I were on a beat today, I would share his apprehension."

Collect Your Check. Although reluctant to admit publicly that they would ever fail to carry out their duty, dozens of policemen in a number of cities have quietly admitted to me that many laws are not enforced because of possible repercussions. Just a few weeks ago, an order was issued in New York City which requires that any policeman who fires his gun for any reason whatsoever, and injures someone, must be "benched" until the matter is thoroughly investigated.

Nothing, however, has so shaken policemen as what happened to two Chicago patrolmen. Responding to a call for help one night in October 1964, they tried to disarm two men who were terrorizing a neighborhood with a broken bottle. Told to "come and get it," the officers subdued the men only after one of the patrolmen was given a slash across the face that later required 27 stitches.

At the trial, police testimony was undisputed. Nevertheless, a newly elected judge freed the men, explaining that the slashing had been justified because the officers had "no business to pull a gun and attack a citizen."

Understandably, Chicago policemen were outraged. Both officers involved in the incident complain that it is constantly being thrown in their faces by criminals. Another policeman commented, "It's better just to shy away from trouble when you run across it." Still another said, "A lot of us have decided that we're just going to collect our paychecks from now on."

Despite All Claims. State and federal laws carefully restrict police use of excessive force and prescribe penalties for officers who misuse it. Typically, states authorize a policeman to "use any force he *reasonably* believes to be necessary" to make an arrest or to subdue an attacker, but what is "reasonable" and "necessary" must be determined case by case. Moreover, authorities severely penalize police misconduct. In Arlington, Va., a 24-year veteran lost his temper one day and kicked and slapped a handcuffed woman. Police Chief William Fawver promptly investigated and dismissed him from the force. In Blackfoot, Idaho, a few years ago, a policeman arrested a man in a barroom brawl, took him to the city limits and beat him unconscious. A federal court convicted the officer for violating the 1870 civil-rights law.

Proved "brutality" complaints, however, are infrequent, despite all the claims. The Civil Rights Division of the Justice Department received 1778 complaints of criminal violations against police during fiscal 1965. Of this number, only 45 contained enough validity to be presented to a grand jury. In the 33 cases terminated, only *five* police-

door in an explosion of splinters. A man in the house knocked her down, and she lay sprawled in the doorway when the police arrived. She was taken to a precinct station, booked, then hospitalized.

Shortly after, she made a formal complaint that she was walking along, minding her own business, when the police stopped her, accused her of breaking and entering, then beat her. "The brutal treatment I received was a violation of my civil rights!" she shrilled. Her charges were dismissed.

4. Communists who exploit the "brutality" slogan to undermine law and order. Known communists and their sympathizers have engaged in police-baiting and brutality smear operations in such diverse areas as the Philadelphia and Harlem riots of 1964, the Watts riot of 1965 and the current wave of anti-Vietnamese-war demonstrations. The FBI considers the tactic so insidious that it has issued special instructions to its agents, explaining that the communist aims are "to arouse the passions of the people against law enforcement; to mislead the public; to smear, discredit and weaken law enforcement everywhere; and to divide, confuse and reduce seriously the strength of the opposition to communism."

Blaming all "police brutality" charges on the communists would be as incorrect as dismissing entirely the Red role in false anti-police propaganda. However, says Dr. Stefan T. Possony of Stanford University, an authority on Red psychological warfare: "It doesn't matter whether the propagandist's motive is outright subversion or simply extremist irresponsibility. The potential results of deliberate faking of accusations are the same: the communists want general public acceptance of the 'police brutality' slogan so they can achieve police disarmament."

Man in the Middle. Today's police officer is truly a man in the middle. Sociologists agree that slum dwellers often turn on police as symbols of the "power structure" that they blame for their plight. Policemen are expected to be social workers, judges, doctors and priests when they go on duty; yet often they do not get the official support they need. The former police chief of a major city privately told me, "Some politicians seem to regard gaining the political support of minority groups as more important than treating their accusations against police with fairness and objectivity."

The police role has been made still harder by instances of unbelievable judicial leniency toward criminals.* Take the case of the three young men with long police records who made a vicious and unprovoked attack on Chicago police officer Frank Perry in 1963. The attackers pleaded guilty. Astonishingly, Cook County Judge Leslie E. Salter called Officer Perry a "crybaby" and turned his assailants loose on mere probation.

Compare with this the treatment

*See "Take the Handcuffs off Our Police!" The Reader's Digest, September '64.

Pittsburgh Press Sunday March 20/66

...sing Effectiveness'

Police Disrespect Feared Out Of Hand

WASHINGTON, March 19 (UPI)—A leading figure in law enforcement fears that police may soon be engulfed by a mounting wave of unpopularity.

"We're being psychologically and physically cudgeled to the point where we may soon be ineffectual," says Quinn Tam. "When this happens, all America is on the brink of a 20th Century age of darkness.

Mr. Tam, 55, a former assistant FBI chief, is executive director of the International Assn. of Chiefs of Police (IACP), an organization of nearly 6000 members which conducts research, training and police improvement programs.

Mr. Tam believes that disrespect for the law and its officers is being raised to an alarming level by constant disparagement of police by militant civil rights forces, abetted by some segments of the sociological, judicial, political and journalism fields.

To reverse the trend, he urges stepped-up community relations efforts by police and understanding and support from the public and its representatives in city halls, state capitols and Washington.

"I am not at all embarrassed to say that the police of this country need help," he declared.

Mr. Tam said a survey by the IACP indicates police "are suffering verbal abuse, provocation, defiance and interference with lawful arrests and other police functions more than they ever have before."

Rainier's Granny An Actress, Too

Women's News Service

BRUSSELS, Belgium — Princess Ghislaine de Monaco, widow of Prince Louis, the former ruler of Monte Carlo, has begun a series of European lectures here in connection with the publication of her book, "Be A Princess."

"I am at ease on the lecture platform because, like Princess Grace, I was an actress before marrying a Monacan ruler," she explained.

"Prince Rainier has followed in his grandfather's footsteps by falling love with a theatrical star."

Red Plot To Discredit Police Told

DESERET NEWS November 25, 1951

A nationwide campaign by Communist subversive leaders to discredit police officers is under way, Supt Lyle Hyatt of the State Highway Patrol warned Thursday.

Mr. Hyatt was briefed on the situation at meetings last week in Sacramento, Calif., of a committee of the International Association of Chiefs of Police, of which he is a member.

"When large groups of people gather, efforts are being made continually by well-coached agitators to promote some form of physical violence," he said.

"Police, who must maintain peace and order, then must apply some form of physical force with the result that pictures are taken and published in an attempt to show that the enforcement officers are employing 'gestapo' tactics," he told.

Once the people lose confidence in the police, they can soon be incited into a state of mind where they begin to attack them, with the result that law and order is undermined, he said.

Principle speakers at the meetings were Dr. Fern Stukenbroeker, administrative assistant to J. Edgar Hoover, director of the Federal Bureau of Investigation; and Tom Fitzpatrick, in charge of investigating subversive activities for the San Francisco Police Dept.

BLUE PRINT FOR REVOLUTION
(By Mario Garcia Kohly)

The "Blue Print for Revolution" was written by General Bayo. He was Spanish by birth and by choice an international communist and an expert on revolution. Castro completed his "Blue Print for Revolution" and by its use rose to power.

Shortly before I left Cuba I had an opportunity of hastily scanning this document in the Congress Building of Havana. My conduct very nearly resulted in causing my arrest. In this "Blue Print" General Bayo gave in their order of execution and in detail the steps that must be taken to bring about the overthrow of a government through revolution. Holding it in my hands and casting my mind back over the preceding months I realized how precisely each and every step has been taken and carried out. I realized also that the success promised by this document if followed accurately was already in Castro's hands. One of the most important of these steps was the developing by carefully planned propaganda of a belief in police brutality. This belief must be created by all possible means and the details of this step were given. The very first was the control and ownership of all news mediums which must be bought up by the communist in advance. With this accomplished the development of the theme of police brutality could be repeated until the public fully accepted it.

In countries where students were active in political affairs they must be brought into direct conflict with the law. In countries where the students were not active, then racial minorities must be used to create the incidents that could be portrayed as "police brutality". Trained party members working among the students, or racial minorities, must arouse convictions of wrongs and injustice until these students, or minorities began public demonstrations in the hope of having the offending conditions changed.

This would be the beginning of the conflict between the police and the students of racial minorities that would make possible the creation of the belief in police brutality. Every least injury suffered by a student was magnified and the cry of police brutality increased daily in volume. Communist infiltrators among the students became more violent in their resistance to the efforts of the police to maintain law and order. This would cause the police in turn to be more violent in their efforts to defend themselves and would give greater opportunity to portray incidents labled police brutality. Martyrs among the students must be created. The student who killed a policeman must be hailed as a hero. The policeman that killed a student even if in defense of his own life, must be branded a murderer and the cry of "police brutality" rose louder and louder.

Bayo explained the importance of creating an image of "police brutality" in this manner. The police, in the mind of the public, represented the executive authority of the government in power. They were its servants and acted in accord with its dictates. If the image of "police brutality" was accepted by the public, the high officials who were directly responsible for these officers of the law and their actions would also suffer the smear of police brutality and a conviction would emerge that the government was brutal, unjust and to be feared.

The destruction of faith and trust in the officers of the law is automatically the destruction of faith and trust in the government.

When I read Bayo's "Blue Print for Revolution" the last step had already been taken and had succeeded. The heads of the Cuban Republic had fled to safety elsewhere and Castro had ridden into Havana to implant Communism, terror and slavery on a betrayed people, who even then, did not realize that through cleverly administered brain washing, they had been delivered into Castro's hands. That "Blue Print for Revolution" had proven accuracy in obtaining definite results.

In the beginning when the rioting first started the police had been given orders that there must be no bloodshed. The students or communists among them were quick to realize that retaliation in kind and not follow the injuries they inflicted and they lost no time in taking advantage of the situation.

The police used water hoses and method of a like kind in their efforts to prevent violence and control the rioters. The students realising they had a good thing made the most of it. Police were knocked down, kicked, trampled and injured but there was no comment of "student brutality". Instead the propaganda of police brutality continued with the students provoking incident after incident in which the servants of the law fared worse and worse. Events reached the stage, where, if the order of no bloodshed had not been drawn, the police force would have quit entirely and walked out.

Later, when dogs and mounted police were used the rioting mobs had a new weapon. "Animals against people", they charged "Roman Circus" and "Christians thrown to beasts". That the police were far outnumbered brought no praise for their bravery in their efforts to restore law and order. That many of them died in the performance of their duty brought no comment. TV showed but one side of the picture—that the police did to the students but never what the students had done to provoke the incident.

While these events were taking place in Cuba, in the U.S.A. the image of Castro as a Robin Hood was being portrayed. (I understand that he is now known as the "Robber Hood"). So effective was this propaganda that I found it impossible to warn officials in Washington or American business men any where of what was really under way in my country. I spent considerable time and money to my avail.

With the stage all set in Cuba for the final act the last step of Bayo's Blue Print was put into execution. Days and night bombs exploded. In apartment building, in theaters, in stores, in empty building; anywhere and everywhere. To make matters worse for the frightened public living phosphorous was spread in restaurants, stores, buses, in fact anywhere that it may come in contact with human bodies and produce horrible burns. There was no safety anywhere. Neither in the street outside or in the walls of their own home. Terror prevailed and the people united in their demand for the government to abdicate. The people blamed the government for all their suffering and misfortune. The legitimate government of Cuba gave up the unequal fight and fled.

Their reason for this decision and act, was so that there would be an end to bloodshed. They wished to spare the people of Cuba further suffering.

I doubt if there was one among them who knew that the real reason for their act threw was Bayo's "Blue Print for Revolution." I frankly would have never have realized what had happened to the Cuban people if I had not had the hurried opportunity of scanning this amazing document.

The world knows the rest to some degree. Castro, without opposition rode into Havana on a Sunday on the last day of 1958. Blood has flown steadily ever since and the Cuban people have been subjected to every form of torture that human minds could invent. My countrymen, know now that its far better to be dead than Red and here come to know it too late.

Police Movement

EXTENSION OF REMARKS
OF
HON. JOHN R. RARICK
OF LOUISIANA
IN THE HOUSE OF REPRESENTATIVES
Wednesday, April 19, 1967

Mr. RARICK. Mr. Speaker, our fellow countrymen must be given to understand that the so-called demonstrations and the indignities against America and American institutions are neither spontaneous nor independent. These mobs, defying every convention and alibiing their actions with a veil of "free speech," "dissent," et cetera, are only pawns—pitiable, misguided pawns—being exploited and manipulated in a well-designed, excellently scheduled program to undermine and crumble local law and order, to create artificial crises and a climate of "hate the police."

A timely and intriguing statement on the execution and success of such a program in the Communist revolution that brought Castro to power in Cuba is Mr. Mario Kohly's article, "Blue Print for Revolution." I insert Mr. Kohly's observation in the Record for all to study:

FILED
FEB - 8 1971
H. STUART CUNNINGHAM
At _____ o'clock _____ M.
CLERK

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

I, W. Pat Jennings, Clerk of the United States House of Representatives, as certifying officer for the House of Representatives, do hereby certify that the attached is a true and correct copy of the Congressional Record of April 19, 1967, as ordered printed by the House of Representatives on April 19, 1967, as evidenced by the Journal of the House of Representatives on April 19, 1967, First Session of the Ninetieth Congress.

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the City of Washington, District of Columbia, this twenty-first day of September, Anno Domini one thousand nine hundred and seventy.

W. Pat Jennings
Clerk, U. S. House of Representatives

W. Pat Jennings
Clerk

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

I, W. Pat Jennings, Clerk of the United States House of Representatives, as certifying officer for the House of Representatives, do hereby certify that the attached is a copy of House Report No. 1935 of the 90th Congress, Second Session, as ordered printed by the House on October 1, 1968, and entered in the Journal of the House of Representatives on October 1, 1968.

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this twenty-first day of September, Anno Domini one thousand nine hundred and seventy.

Clerk, U. S. House of Representatives

FILED
FEB -3 1971
H. STUART CUNNINGHAM
Clerk

served in the California Legislature in 1949. He was a Member of Congress from 1950 to 1954 and has been mayor of Los Angeles since 1961.

His tenure in the California Legislature in the mid-1930's gave him an opportunity to study the subject of communism, and since that time the witness has maintained an interest in Communist activities.

In answer to a question concerning his opinion of underlying factors which caused the riots in the last few years, Mayor Yorty replied:

I would certainly say that one of the factors is the constant repetition of subversive propaganda, the agitation and propaganda conducted by the Communist Party within the framework of their historic objective to break down the respect for government, certainly for law and order, and to personalize, as they always do, this objective mainly in the police officer.

Asked if he believed these riots had been spontaneous or planned, the mayor said:

I think that there are some of both. * * *

* * * * * * *

I think that the propaganda over the years has been so constant and at times very effective * * *.

I also think there are some riots where subversive forces have actually planned * * * incidents that they would hope would spark a riot.

Mr. Yorty produced as an exhibit for the record a pamphlet entitled "The Big Lie," which he had prepared as mayor of Los Angeles and which contained a short history of the charges of police brutality extending over a period of 21 years—since 1946—by the Communist Party.

The witness stated that law enforcement has been handicapped "by the reinterpretation, really the rewriting of the Constitution by the United States Supreme Court * * *." He cited as examples of such "rewriting" the exclusionary rule of evidence, the rules of search and seizure, and the registration of known criminals.

Mayor Yorty recalled that Lenin had made reference to "police brutality" in his writings as early as 1902, and noted that he knew of no period in history when the "campaign against the police has been quite as effective as it is today."

The mayor was asked if police brutality charges were made in his city during the Watts riot, and he replied that an attempt was made "to blame the police for the rioting," and added:

This led to my unpleasant confrontation with Dr. Martin Luther King. * * *

* * * * * * *

he persisted in arguing that the police were to blame for the rioting. Then he went out and got before the cameras and newspapers and made that same charge. I felt it necessary to answer that charge and to tell him that it was very unfair for him to come out to Los Angeles and try to blame the police for the rioting.

Mayor Yorty then stated that he did not "know of any case where an officer has had to be dismissed for brutality."

The mayor noted that there were many people who made charges of police brutality whose motive was to discredit the police department and to carry on the so-called Communist struggle campaign to "break down respect for the law enforcement officials and * * * eventually * * * break down the ability of our Government to operate."

I, FRANCIS R. VALEO, Secretary of the Senate of the United States of America, do hereby certify that the document hereto attached (consisting of pages 1 through 32, inclusive) is an official printed copy of a hearing before the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, Committee on the Judiciary, United States Senate, Eighty-seventh Congress, first session, dated June 13, 1961, entitled "A Communist Plot Against The Free World Police;" which hearing was printed for the use of the Committee on the Judiciary.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of the Senate of the United States of America at the city of Washington, this the 21st day of September, A. D. 1970.

Francis R. Valeo

Secretary of the Senate of the United States

an editor and personnel director, of the Bureau of National Affairs, a publishing concern which David Lawrence had established to issue several technical journals.

In June 1942, I went to work for the Office of the Coordinator of Information. When the Office of Strategic Services was created from that staff, I was assigned to OSS, went to London, and in 1944, landed with the 1st United States Army in Normandy. I was transferred in August of that year to Gen. Omar Bradley's 12th Army group and served until V-E Day as General Bradley's G-2 briefing officer. While I was in the United States en route to a new assignment in the China-Burma-India theater, the Japanese surrendered and, after some months, I became an editor of the news magazine, World Report, another David Lawrence enterprise.

Mr. SOURWINE. When did you become associated with CIA.

Mr. KIRKPATRICK. In 1947, when Gen. Hoyt Vandenberg was named Director of the newly established Central Intelligence Group, he asked me to assist in organization of some parts of the undertaking. I took leave from the magazine and have remained with CIA.

Mr. SOURWINE. I believe you served as Division Chief, Assistant Director, and as executive assistant to the Director before you assumed your present position?.

Mr. KIRKPATRICK. That is right.

Mr. SOURWINE. You believe that the organization has become an important facility in the security field and that its services are needed in a cold war as much as in a hot war?

Mr. KIRKPATRICK. I do. I think it is imperative that the security forces of the free world be kept currently informed of subversive activities anywhere in the world which may affect their countries. I believe, also, that the public should be alerted whenever it appears they are likely to be the unwitting tools or the victims of a specific campaign of subversion.

Mr. SOURWINE. Mr. Kirkpatrick, last year the Internal Security Subcommittee published a staff study rounding up details of recent riots against constituted authority all over the free world, including the United States. Copies of that small pamphlet disappeared like magic, indicating, it would seem to me, a deep concern among the American people lest this type of protest should get out of hand.

Now, I am sure those who read that pamphlet, and many others who asked for copies we couldn't supply, will profit by the explanations you gave of handling this form of revolt and the suggestions you offered for avoiding the traps set by the highly skilled Communist agents who may always be found directing these mass upheavals.

Will you proceed, please, at your own pace?

Mr. KIRKPATRICK. Senators and Mr. Sourwine, many of us know what is back of the mob violence which we have been considering. It is probable, however, that few of the demonstrators realize that they are victims of a war that is being waged in the free world today. It is a life-and-death struggle between communism, which makes the people the slaves of the state, and free world democracy, in which the state carries out the will of the people.

Our police are among the foremost guardians of freedom and thus a major target of the Communists. The better the force, the greater its efficiency, the higher its competence in preserving the peace, the

more vital it is for the Communists to destroy it. I understand it is the committee's desire that I outline the tactics of Communist subversion and describe several case histories illustrating their technique for attacking the police.

The international Communist organization provides a training manual for espionage agents in which their duties are enumerated. This pocket-sized pamphlet was seized in Europe. Let me paraphrase the tasks assigned to agents in one of the countries of the free world.

First, make investigations and report on the activities of the police and security services.

Second, investigate and repress those security organizations which support the government.

Mr. SOURWINE. Would that task include action against such organizations as CIA, the FBI, and even this subcommittee and the House Committee on Un-American Activities?

Mr. KIRKPATRICK. I would assume so.

Third, find ways to infiltrate into the police and security organizations to steal documents—particularly those recording their knowledge of communism—and to destroy everything of value.

I believe that the manual is specific enough in those instructions.

Senator DODD. We had sworn testimony a few months ago that almost the first thing the Castro forces did when they took over Havana was to destroy all government records of Communist investigations, including the dossiers of more than 250,000 Communists and Communist supporters.

Mr. KIRKPATRICK. I have a second example. Let me describe briefly the history of the Communist war against the police in one of the major countries of the free world. I should state initially that this particular country has a long history of excellent police service and a law, dating back many years, requiring that the police force be completely divorced from all politics. Further, until the Communist politicians started to create trouble in recent years there had never been an incident on record showing political interference with the administration of the police force.

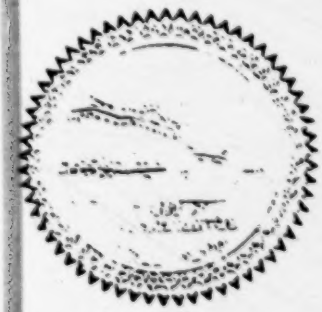
In this particular nation there is a national police force which has five levels but is organized on a national, provincial, and local basis. The Communist technique has been directed primarily toward discrediting the police in the eyes of the people. On the local level, Communist troublemakers would start fights in public places in order to involve the local police. When the police went into action, the troublemakers linked arms in an effort to show that it was the police who were causing the incident.

The handbook from which I have been quoting very generously provided graphs or sketches to illustrate this point. Of course, they are designed to facilitate training of Communist agitators. The sketches show, in the most elementary fashion, how crowds can succeed in crushing police opposition. Those not familiar with Communist techniques will more easily understand, by examining the pictures, how a few well-trained Communist agitators can utilize crowds for their purposes. I have photo copies here, somewhat enlarged, which I shall leave with the committee. Attached to each is a brief description of the situation it is designed to portray.

W. Pat Jennings
Clerk

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

I, W. Pat Jennings, Clerk of the United States House of Representatives, as certifying officer for the House of Representatives, do hereby certify that the attached is a true and correct copy of the Congressional Record of September 24, 1965, as ordered printed by the House of Representatives on September 24, 1965, as evidenced by the Journal of the House of Representatives on September 24, 1965, First Session of the Eighty-Ninth Congress.



In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the City of Washington, District of Columbia, this twenty-first day of September, Anno Domini one thousand nine hundred and seventy.

W. Pat Jennings
Clerk, U. S. House of Representatives

[From U.S. News & World Report, Sept. 27, 1965]

POLICE BRUTALITY: HOW MUCH TRUTH—HOW MUCH FICTION?

(By J. Edgar Hoover, Director of the Federal Bureau of Investigation)

The cry of "police brutality" is being heard all across the land with increasing frequency.

It is a charge which strikes fear into the heart of every freedom-loving man.

Is it, however, a charge which is justified in the United States? Or is it a charge made with malicious intent by some individuals who have little concern for the truth so long as their interests are served?

Yes, there is police brutality in the United States, but certainly not to the extent which some would have you believe.

Like all conscientious law-enforcement officials, I abhor any misuse of police authority. It is inexcusable and cannot be tolerated. Thankfully, it is not tolerated, for in most instances the few misfits and unsuited individuals who get into law enforcement and improperly use their authority are ferreted out and eliminated as soon as possible.

How extensive is police brutality? We can only gage this on the basis of complaints received by the FBI from the victims or other sources. At this point, I want again to state clearly and without equivocation that I am opposed to police brutality in any shape or form. We know that there are instances of police brutality, particularly in the less progressive police organizations. I want to emphasize that any allegations of police brutality coming within this Bureau's jurisdiction will receive immediate and thorough investigative attention, and that the facts developed in these investigations will be furnished to the Department of Justice for prosecutive consideration. Statistics of these investigations in the last 3 fiscal years present the following picture:

In fiscal year 1963, there were 1,376 allegations of brutality received by the FBI. Investigations of these complaints resulted in indictments being returned in 12 of the cases involving 20 officers. Convictions were recorded in three cases involving four officers.

In fiscal year 1964, there were 1,592 complaints of police brutality. Sixteen of these cases resulted in indictments against 28 officers, and convictions were recorded in two cases involving 4 officers.

Fiscal year 1965 brought 1,787 allegations of police brutality with indictments being

E9

returned in 13 cases involving 20 . . . are Convictions resulted in five cases involving six officers.

While many complaints of police brutality are made sincerely and in good faith, some charges are unfounded, and irresponsible. Often it is obvious they are made purely for the purpose of intimidating local law-enforcement agencies and harassing the FBI.

FBI agents in our southern offices have been referred from one civil rights worker to another in their efforts to run down allegations of police brutality. Individuals who allegedly possess the facts often are "unavailable for interview" when agents arrive to investigate.

Earlier this year, FBI agents interviewed one person who had sent a telegram to a Government official containing, among other things, allegations of police brutality. He stated he had objected to these allegations being included in the telegram, since they did not have merit. Another official of the organization concerned, however, had insisted the irresponsible charges be included, he said.

There have been irresponsible and brutal acts by certain law-enforcement officials and, because of them, it has been easy to spread the impression that many or all law-enforcement officers operate in the same manner.

However, some changes are unfounded. Occasionally, allegations of police brutality result in prosecution of the complainant when it can be conclusively shown that he has purposely filed a false complaint. FBI investigations into such complaints, therefore, can result in prosecution of the accuser or the accuser.

Many complaints of police brutality, however, are never officially lodged with the FBI or any other law-enforcement organization. They are indiscriminately made to representatives of various news media, shouted from the soap box at a street corner rally, proclaimed from the podium and often from the pulpit, and circulated through printed pamphlets.

Rarely is proof offered in support these blatant accusations, which are designed mainly to incite the listener or the reader. Many riots or near riots which have occurred in this country in recent months have been provoked by such charges.

Charges of police brutality also have been heard with great frequency before, during, and after the drunken orgies and youth riots which have occurred at some of our resort areas in recent years.

Allegations of police brutality have been "supported" by still and motion pictures which invariably show one or more policemen subduing or carrying a semi- or participant in the disorder. Rarely do these pictures reveal the full story—the unprovoked attacks on the officers involved which necessitated their use of force.

It is a known tactic of international communism to take advantage of both real and contrived opportunities to undermine constituted law-enforcement by bombarding it with charges of brutality. We know the Communist Party, U.S.A., as well as various splinter Communist organizations in this country have used this tactic. Communist adherents have fanned the flames of passion wherever unrest against law enforcement has been prevalent. Frequently, Communist agitators have been sent into areas of unrest to stir their words of treason through the spoken and printed word. The Communist press continually grinds forth distortions, often outright falsehoods, about police intimidation and brutality. The Communists miss no opportunity to blacken the name of a representative of law enforcement or the profession as a whole.

But only do the Communists directly exploit unrest, but they frequently spread their germs of subversion through front groups and dupes. This tactic has become increasingly evident in recent demonstrations by young people where police have been charged with brutality in handling picket lines or demonstrations involving racial matters or protests against U.S. involvement in Vietnam.

Communist adherents are schooled in methods of intimidating law enforcement. Whenever they are confronted by a law-enforcement officer, the word brutality is foremost upon their lips. It is their aim to humiliate, exasperate and provoke the law-enforcement officer in an effort to prevent his judicious and calm enforcement of the laws he is to uphold.

I am not implying that all charges of police brutality emanate from the Communists or their dupes. If this were true the problem could more easily be solved. The fact is, however, such charges are coming from the well-meaning, if ill-informed and poorly advised, citizens.

On the other hand, I recognize that one of the greatest preventives of brutality is a responsible and alert citizenry which is quick to complain.

The conflict resulting from the false charges of police brutality is a problem which must be solved, for it is eroding the already declining respect for law and order in our great Nation. When our laws no longer enjoy the respect of our citizens, then our present form of government will be lost. It is just as important that the enforcers of the law be given respect, for without it their task will be impracticable.

There is no panacea, no pat solution to this problem, for it exists primarily in the hearts and minds of men. It is a problem in human nature, a problem in man's relation to man and his physical surroundings.

An efficient police force is the first line of protection for the law-abiding citizen. The conscientious law-abiding citizen should rise in righteous anger against those who falsely cry "police brutality" to cover their insidious scheming to gain something they covet but are not willing to acquire the judicial way.

There is a constant barrage of brutality allegations and obvious attempts by certain elements to control the police through "citizen review boards" to hear charges, many of them fabricated. It is a wonder that men are willing to don a policeman's uniform and put their lives on the line every time they step out onto the street.

It should be noted that the majority of advocates of this solution are members of, or are allied with, the minority groups which most frequently allege police brutality. They contend such boards would help convince minority groups that they can receive fair treatment, would act as a deterrent on the few police officers tempted to abuse their powers, and would result in reasonable restraints being imposed on officers, and would be an impartial means of clearing the air of irresponsible charges.

On the opposite side are the vast majority of law-enforcement officers, including myself. There already is sufficiently adequate machinery to handle complaints against law-enforcement officers established within the framework of the agencies themselves and the constituted government under which they operate. An independent review board would abridge the administrative authority which should rest with the responsible officials of the agency; it would undermine the efficiency and sap the morale of the agency; and it would deter officers in the proper performance of their duties for fear of having charges placed against them which would be judged by individuals wholly unfamiliar with law enforcement work. Naturally, every special-interest group in a community would demand representation on any such board.

Some self-styled spokesmen for the civil rights movement have advocated the establishment of an independent Federal agency to handle all investigations relating to civil rights matters. They are openly critical of the FBI's objective handling of such investigations, and apparently will be satisfied only with some super-Federal agency which will do their work and call. Objectivity and impartiality are not their name. Rather, they seek a rubber-stamp agency which will approve their claims without regard for law. Certainly, there is no place for such an organization in a democratic society.

What has been accomplished in the [illegible] fields under the FBI's policy of [illegible] objectivity? In the last several years FBI investigations in 170 counties in 4 Southern States resulted in numerous suits being filed by the Department of Justice which enabled thousands of previously disenfranchised Negroes to register to vote.

The FBI investigation of the brutal murder of three civil rights workers in Philadelphia, Miss., in June 1964, resulted in 21 individuals being arrested in connection with this crime. Elsewhere in Mississippi, FBI investigations brought a halt to a series of bombings of Negro churches and homes. Nine men were arrested and subsequently pleaded guilty or were convicted. Ten were, however, released on probation after being given suspended sentences by a Federal court.

"THEY DID HAD PERPETRATED THE KLAN"

Today, the FBI has effectively penetrated the Ku Klux Klan and thus is aware of most of its activities and plans. An FBI informant in the Klan enabled almost immediate arrest of the individuals charged in connection with the recent murder of Mrs. Viola Liuzzo on a lonely road between Selma and Montgomery, Ala. We shall continue pressing every investigation in the civil rights field, but objectivity will always be the standard.

Great strides have been made in elevating law enforcement to a professional status worthy of respect. But more can be done. Personnel standards of law-enforcement agencies need to be raised in some areas. I undoubtful this can ever be accomplished as long as society neglects the law-enforcement officer in terms of salary. Here, positive action can be taken, but many who profess to be seeking solutions have totally ignored this need.

The police officer is human. He has a family which looks to him for the necessities of life. He feels pain when he is hurt, indignation when he is cursed, anger when he is spat upon, and humiliation when he or his fellow officers are ridiculed. He will be not in an air-conditioned office—it is a cold night in the city alleys where danger lurks at every moment. He is the lone person called when trouble arises and the first one condemned when something goes wrong.

Such are the requirements of law enforcement, and, if one member of the police commits some wrong, his guilt is ours as well. Law enforcement needs brutality. Neither his school nor college education alone will make a good law-enforcement officer. He must be trained in the techniques of enforcement, schooled in the responsibilities of his job, and taught the rudiments of human relations so that he can be a law enforcement. Above all, he must learn self-control, lest he be hailed into court [illegible] needed.

NON-DEMONSTRATIONS AND "EXPLOSIVE"

On the opposite side of this issue there is need for some elimination, also, for there are middle and irresponsible individuals who are most active in fostering unrest. The civil rights movement has made great progress but not without cost. A few spokesmen for the movement have been among those who have made irresponsible and inflammatory statements. There is good evidence, in fact, that some so-called civil rights demonstrations have been designed specifically with the hope of ensuring law-enforcement [illegible]

Exhibit F

INVESTIGATION OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES

SPECIAL COMMITTEE ON UN-AMERICAN ACTIVITIES HOUSE OF REPRESENTATIVES

SEVENTY-EIGHTH CONGRESS

SECOND SESSION

ON

H. Res. 282

TO INVESTIGATE (1) THE EXTENT, CHARACTER, AND OBJECTS OF UN-AMERICAN PROPAGANDA ACTIVITIES IN THE UNITED STATES, (2) THE DIFFUSION WITHIN THE UNITED STATES OF SUBVERSIVE AND UN-AMERICAN PROPAGANDA THAT IS INSTIGATED FROM FOREIGN COUNTRIES OR OF A DOMESTIC ORIGIN AND ATTACKS THE PRINCIPLE OF THE FORM OF GOVERNMENT AS GUARANTEED BY OUR CONSTITUTION, AND (3) ALL OTHER QUESTIONS IN RELATION THERETO THAT WOULD AID CONGRESS IN ANY NECESSARY REMEDIAL LEGISLATION

COMMITTEE PRINT

APPENDIX—PART IX

COMMUNIST FRONT ORGANIZATIONS 1944

WITH SPECIAL REFERENCE TO

THE NATIONAL CITIZENS POLITICAL ACTION COMMITTEE

FIRST SECTION

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1944

ELMER GERTZ. Guest Lecturer. Author of *The People* vs. *The Chicago Tribune*, *Frank Harris: A Study in Black and White*, *The Epic of the Prairie State*, and other writings. Formerly branch circulation manager of the Chicago Evening American; faculty member of the Jewish People's Institute; director of public relations of Illinois Police Association; founder of the Civil War Round Table; member, National Executive Board of the National Lawyers Guild, president of the Chicago Chapter, and chairman of the Committee on the Press in Wartime; member, Illinois State Bar Association, Illinois State Historical Society, and the Abraham Lincoln Association; practicing attorney.

Exhibit G

ABRAHAM LINCOLN SCHOOL (Chicago, Ill.)

1. Cited as an adjunct of the Communist Party.
   (*Attorney General Tom Clark, letter to Loyalty Review Board, released December 4, 1947.*)
2. Successor of the Workers School as a "Communist educational medium" in Chicago.
   (*Special Committee on Un-American Activities, House Report 1311 on the CIO Political Action Committee, March 29, 1944, p. 82.*)
3. "Schools under patriotic and benevolent titles indoctrinate Communists and outsiders in the theory and practice of communism, train organizers and operatives, recruit new party members and sympathizers * * *. Schools of this type" include the Abraham Lincoln School, Chicago.
   (*Internal Security Subcommittee of the Senate Judiciary Committee, Handbook for Americans, S. Doc. 117, April 23, 1956, pp. 91 and 92.*)

NATIONAL LAWYERS GUILD

1. Cited as a Communist front.

   (*Special Committee on Un-American Activities, House Report 1311 on the CIO Political Action Committee, March 29, 1944, p. 149.*)

2. Cited as a Communist front which "is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions" and which "since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents."

   (*Committee on Un-American Activities, House Report 3123 on the National Lawyers Guild, September 21, 1950, originally related September 17, 1950.*)

3. "To defend the cases of Communist lawbreakers, fronts have been devised making special appeals in behalf of civil liberties and reaching out far beyond the confines of the Communist Party itself. Among these organizations are the * * * National Lawyers Guild. When the Communist Party itself is under fire these offer a bulwark of protection."

   (*Internal Security Subcommittee of the Senate Judiciary Committee, Handbook for Americans, S. Doc. 117, April 23, 1956, p. 91.*)

W. Pat Jennings
Clerk

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

I, W. Pat Jennings, Clerk of the United States House of Representatives, as certifying officer for the House of Representatives, do hereby certify that the attached is a copy of House Document No. 398 of the 87th Congress, Second Session as ordered printed by the House on April 12, 1962, and entered in the Journal of the House of Representatives on April 12, 1962.

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this twenty-first day of September, Anno Domini one thousand nine hundred and seventy.

W. Pat Jennings

Clerk, U. S. House of Representatives

REPORT ON Exhibit H

THE NATIONAL LAWYERS GUILD

Legal Bulwark of the Communist Party

81st Cong.
2nd Session

SEPTEMBER 17, 1950

et H
id.

Prepared and Released by the
COMMITTEE ON UN-AMERICAN ACTIVITIES, U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

W. Pat Jennings
Clerk

Office of the Clerk
U.S. House of Representatives
Washington, D.C. 20515

I, W. Pat Jennings, Clerk of the United States House of Representatives, as certifying officer for the House of Representatives, do hereby certify that Juliette P. Joray is the duly appointed Recording Clerk of the Committee on Internal Security of the House of Representatives.

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this twenty-first day of September, Anno Domini one thousand nine hundred and seventy.

W. Pat Jennings
Clerk, U. S. House of Representatives

[redacted]

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNAL SECURITY
WASHINGTON, D.C. 20515

September 21, 1970

TO WHOM IT MAY CONCERN:

I, JULIETTE P. JORAY, duly appointed Recording Clerk of the Committee on Internal Security of the House of Representatives, to which was transferred the records of the Committee on Un-American Activities on February 18, 1969, do hereby certify that the attached pamphlet entitled REPORT ON THE NATIONAL LAWYERS GUILD LEGAL BULWARK OF THE COMMUNIST PARTY originally released as a Committee print on September 17, 1950, 81st Congress, and made a House Report on September 21, 1950, by the Committee on Un-American Activities is a true copy of same and that I am the custodian of said record.

GIVEN under my hand this 21st day of September, 1970.

Juliette P. Joray
Juliette P. Joray
Recording Clerk

FILED
FEB - 8 1971
H STUART CUNNINGHAM
At ..... o'clock .....
CLERK

STATEMENT OF COSTS

1. Printing costs for Answer Brief of Appellee (Scheffer Press, Inc. Invoice #30485) for the following:		
36 Pages	$ 270.00	
Covers	16.00	
2 Pages Index	28.00	
Footnotes	127.40	
Filing and service by mail	8.50	
Gross bill for Answer Brief	$ 449.50	
Less filing and service by mail	— 8.50	
Less discount	—21.60	
Net Appellee's Cost		$ 419.40
2. Printing costs for supplemental Appendix (Scheffer Press, Inc. Invoice #30839) for the following:		
141 Pages	$ 916.50	
Covers	18.00	
3 Pages Index	42.00	
Overtime	75.00	
Exhibits, reduce, prepare layout, make plates and print	526.00	
Excessive underscoring	208.00	
Hang and indent	20.85	
Bindery	17.70	
Filing and service by mail	5.00	
Running titles	77.85	
Net Appellee's Cost Brought Forward		$ 419.40

Gross Bill Supp. Append.	$1,906.90	
Less Discount	—141.00	
Less filing & service by mail	— 5.00	
Less portion of supp. append. specifically included to accommodate the cross appeal in cause #71-1175 (22 pages of text and one page of index)	—159.00	
Net Appellee's cost		$1,601.90
Total Appellee's Costs		$2,021.30

State Of Illinois
County Of Cook—ss.

James A. Boyle, Jr., being first duly sworn on oath, deposes and says as follows: He is the duly authorized attorney for Defendant-Appellee in the above case, and that he has knowledge of the details of the matters presented in the foregoing Statement of Costs; that each item in the foregoing Statement of Costs is correct and has been necessarily incurred in this case, and the services for which the said fees were charged were actually and necessarily performed.

/s/ James A. Boyle, Jr.

Subscribed And Sworn to before me
this 11th day of August, 1972.

.....

Notary Public

MOTION TO RECONSIDER THE TAXING OF COSTS

Now Comes Plaintiff-Appellant-Appellee, Elmer Gertz, pro se, and by his attorney, Wayne B. Giampietro, and moves the Court to reconsider the taxing of costs on appeal in the within cause in the amount of $2,021.30 and in support thereof represents unto the Court as follows:

1. Rule 39 (a), Federal Rules of Appellate Procedure, states that "if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered", thus leaving the matter of taxing of costs to the discretion of the Court.

2. The decision in the within matter was a close one, as indicated by the opinions filed by the Court, and was an extension of previously existing law.

3. Plaintiff had obtained a verdict from a jury in the within cause, which was set aside by the trial court.

4. Plaintiff herein presented important matters of public policy pertaining to all attorneys and their rights in the field of libel and slander.

5. The decision of the trial court in granting judgment notwithstanding the verdict was based upon a major shift in the trial court's view of the law applicable to this case.

6. Defendant's counsel as much as admitted in his closing argument to the jury that the statements made of and concerning plaintiff in the article involved herein were false.

7. In view of the foregoing, it would be inequitable to tax costs herein against Plaintiff.

Wherefore, Plaintiff-Appellant-Appellee prays that this this Court enter an order herein requiring each party to bear its own costs in connection with the within appeal.

/s/ Wayne B. Giampietro
Elmer Gertz, pro se and
Wayne B. Giampietro
Attorneys for Plaintiff-Appellant-Appellee

OBJECTION TO PLAINTIFF-APPELLANT'S MOTION TO RECONSIDER THE TAXING OF COSTS

Now comes defendant-appellee, Robert Welch, Inc., by its attorney, James A. Boyle, Jr.; and objects to the motion to reconsider the taxing of costs, and as grounds and reasons therefor, states as follows:

1. Plaintiff-appellee cites no reason sufficient in law to divest defendant-appellee of its right to be reimbursed part of its expenses of appeal. The arguments suggested in support of the said motion would be relevant only if damages and costs were being sought pursuant to the filing of a frivolous appeal.

2. The "closeness of the case", envisioned by plaintiff, characterizes every spirited contested appeal. The judgment of the trial court was not modified. No dissenting opinion was given. The appeal was prosecuted by the attorney-plaintiff, concededly in good faith, with full knowledge of the rules relating to costs.

3. The rule apportioning the burden of costs on appeal is objective, universal in its application, and one of the detering factors in the post-trial decisions of disap-

pointed litigants. Plaintiff seeks an immunity from his obligations under the rule, and thus, a preference, upon such grossly subjective considerations as to abrogate the intended self-executing application of the rule.

/s/ James A. Boyle, Jr.
Attorney for Defendant-Appellee-Appellant

Order, United States Court of Appeals for the Seventh Circuit, entered September 12, 1972:

On consideration of the motion of Plaintiff-Appellant-Appellee Elmer Gertz, pro se, and by his attorney, for an order of this Court reconsidering the taxing of costs on appeal in the amount of Two Thousand Twenty-One and 30/100 Dollars ($2,021.30),

It Is Ordered that said motion to reconsider the taxing of costs on appeal be and the same is hereby Denied.

Supreme Court of the United States

No. 72-617

Elmer Gertz,

Petitioner,

v.

Robert Welch, Inc.

ORDER ALLOWING CERTIORARI. Filed February 20, ---------- , 1973.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh ---------- Circuit is granted.